A VINDICATION OF MONARCHY AND The Government long eſtabliſhed in the Church and Kingdome of *England*, Againſt The pernicious Aſſertions and tumultuous Practiſes of the Innovators during the laſt Parliament in the REIGN OF *CHARLES* the I.

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A VINDICATION OF MONARCHY AND The Government long eſtabliſhed in the Church and Kingdom of *England*, &c.

Chap. I.

Innovations in Government; Publiſhing of falſe Newes, and Propheſies; Pretenſes of Reformation; Sects and Diviſions in matters of Religion; Quarrel againſt Epiſcopacy.

WE find by daily experience that thoſe Rivers which run from the pureſt Fountains, the farther they run, the more corruption they gather: and ſo is it with the Church and Common-wealth, which have had their inſtitutions, diſcipline and lawes drawn from the pure fountains of piety, prudence and equity; yet

by the courſe of time they are carried through the corruption in manners, defects in government, and in the execution of good Lawes, into a ſtream of abuſes, contempt and confuſion. But when the corruptions are ſuch as are not incurable, but removable, we find it much better to content our ſelves with a fair, orderly and prudent reformation, or a temporary toleration, then by adventuring raſhly upon the cure, make the diſeaſe worſe, or change it into as bad, through the change of that which hath long continued, and may very fitly be retained, and eaſily be purged from the corruptions and abuſes which are adherent. For by Innovations, eſpecially ſudden, the minds of men are diſquieted, fuel is brought unto fiery and turbulent ſpirits, and the peace of the Church and Common-wealth indangered, if not deſtroyed, which by the Apoſtolical precept and practiſe we ought carefully to preſerve. The rule which *Ulpian* giveth us is worth remembrance, *In rebus novis conſtituendis evidens eſſe debeat utilitas, ut ab eo jure quod diu æquum fuit recedatur.* It is an evident ſign of a diſtemperature in the brain, or of great levity, when we raſhly ruſh upon the change of ancient inſtitutions and cuſtomes, if there can be found no great inconvenience in the uſe of them. The deſire of change is reſtleſs, and like ſuperſtition taking hold in the minds of men, when it hath broken the bounds of piety. Alterations are dangerous, although they are ſpecious, and have ſome reaſon to juſtifie them; and oftentimes thoſe are the moſt dangerous, which are moſt ſpecious, eſpecially if they are driven on tumultuouſly, or by faction. When the people begin to be divided in Religion, or to ſhew themſelves diſcontented with the preſent government, then do the ambitious and factious ſpirits (who fiſh beſt in troubled waters) lay in their hooks and make uſe of the ſeaſon and opportunity. And it hath been often obſerved, that thoſe who have had deſigns upon the State, or to become a head of a Faction, to raiſe ſedition, or to poſſeſſe or alter the Government, have ever pretended Religion or the Publick good, or the reformation of abuſes, and the removing of evil Counſellors. Pretences of great efficacy in a diſcontented and factious ſtate, abounding with men preſumptuous, ſelf-willed, and deſpiſers of Government,

vernment, as the Apoſtle ſaith; and prone to caſt off all affection and fear of their Soveraign. I need not to inſiſt upon examples, they are frequent, I will only relate one of our own. Vnder this pretence of evil Government, and removing of evil Counſellors, and with great proteſtations of ſincerity and love to his Countrey, did *Richard* Duke of *York* gain the affections of the people from their innocent King *Henry* the Sixth, who ſtood in his way to the Crown, ſo as the Duke of *Somerſet* for his faithful adhering unto that King *Henry* his Nephew, and for croſſing the aſpiring of the Duke of *York*, had by great cunning contrivance the hatred of the inconſtant and ſeduced people ſtirred up againſt him, under that general and indefinite notion of an evil Counſellor, and an enemy of the Common-wealth, to the ruine of himſelf firſt, and then of his King. Upon this and the like examples, it ſeemeth, that the Statute in the third year of *Henry* the ſeventh did reflect; for the words are, *that by quarrels made to ſuch as have been in great Authority, Office, and of Counſel with the King of this Realm, hath enſued the deſtruction of the Kings, and the ruine of the Realm*: So as it appeared evidently, when the compaſſing of the death of ſuch true ſubjects was had, the deſtruction of the Prince was imagined thereby. * We find for the furtherance of ſuch deſigns, two peſtiferous means often uſed by factious men and Incendiaries to infatuate the People, and to raiſe them on their ſide; the one is the deviſing and publiſhing of falſe tales and newes, as did *Shimei* by bruiting infamous Speeches or Libels againſt King *David*, calling him the man of bloud. * The Hiſtories in all times, and the Lawes againſt it in all States, ſhew the hurt it bringeth to the Common-wealth. The *Venetians* put to death a man who divulged falſe newes, which much diſquieted the City. But thoſe who firſt related the true newes of the defeat given to the King of *France* by the *Saracens* in the Eaſt, were condemned in *France* to be hanged. It was an ancient manner among the Heathen Princes, that if any novelty happened, it ſhould be firſt declared to him who held the

Jude.

In Anglia non deſeſſiones quamprimùm à Rege Henrico ſexto, ſed in eos qui apud eum plurimum poterant, Impetus factus erat. Paulatim ea. dicia crevit & ducum inter æmulationes, ſimultateſque, ad poſtremum & Domeſtica bella exorta, & in ipſum Regem vis intentatur. Paulus Æmilius lib. 10. Hiſtor.

* *Per latus alterum Regem petii, eique litem intentari, ut qui capi & opprimi non potuit, is amotis fidis Conſiliariis & miniſtris, Regia dignitate ſimul ac libertate ſpolietur.* Thuan. de Henrico 3. Galliæ lib. 91. Hiſt.

* We have made lies our refuge, and under falſehood have we hid our ſelves, *Iſa.* 28. 15.

M. Paris in Hen. 3.

Euſeb. Eccleſ. hiſt. l. 2 *c.* 2.

the Scepter. The Statute made in the 12. of *Rich.* the 2. ſaith, "That by this means of newes, diſcord hath often riſen be-"tween the King and the People, and ſlander within the "Realm, whereof quick deſtruction and ſubverſion of the "Realm may enſue. *Cæſar* ſaith in his Commentaries, *Falſis rumoribus homines terreri, & ad facinus impelli, & de ſummis rebus conſilium capere cognitum eſt*: *A back-biting tongue hath pulled down ſtrong Cities, and overthrown the houſes of great men. The tongue ſetteth on fire the whole courſe of nature, and it is ſet on fire of hell*, ſaith the Apoſtle. It is called *a ſharp ſword*, by the Pſalmiſt, *gladius acutus*; and in *Job*, *flagellum linguæ*.

Eccluſ. 18. 14.

James 3

The other means uſed by Incendiaries, is the publiſhing of Propheſies, or making uſe of them to amuſe the people, and keep them in the expectation of a change. New Religions were brought into *Rome* by certain Books of Propheſies, which were publickly burned. It was a capital Crime by the *Roman* Law in him, * *Qui aliquid fecerit, quo leves hominum mentes ſuperſtitione Numinis terrerentur*: and ſo was it alſo in them, † *Qui divinandi artem exercebant, aut Vaticinii libros habebant*. And thus by the Canon Law, and alſo by Mahomets Law, *Magiam & Cabaliſticas artes lege Mahometica vetitas eſſe*. The Magicians and Southſayers, and thoſe who profeſs the knowledge of things to come are more dangerous to a City, ſaith St. *Hierom*, then fire, eſpecially thoſe who conſult of the ſtate of the Common-wealth, or of the life and death of the Prince; * *Qui de ſalute Principis & ſumma Reipublicæ Mathematicos conſuluit*, he was puniſhed by death; And by that Law the crime was equal in both, *talia prohibita tam diſcere quàm docere*, in thoſe who did ſeek to learn, as well as the Maſters of that Art. † The Canon Law made all thoſe infamous, *Qui ad ſortilegos & Divinos concurrunt infames ſunt, nec accuſatores, nec teſtes eſſe poſſunt*. The divine Law ſaith, *there ſhall not be found amongſt you that uſeth Divination, or is a Wizard; they ſhall be put to death: Seek not after Wizards to be defiled by them.* * *Mathematicorum fallaces divinationes & impia diliramenta*, ſaith St *Auſtin*. Who ſo are deſirous to ſearch into theſe vain and impious Propheſies, and to enquire of things to come, the Devil is ready to anſwer their curioſity with

* *Livius. L.* 30. *F. de Pœnis.*

† *Paul. ſent. lib.* 5. *tit.* 21. *&* 23. *tit. Cod. de maleſic. & Mathem.*

Leo deſcrip. Africæ.

* L. 8. *Cod. de Mathematicis. vel Ariolos, aruſpices, vaticinatores conſuluit, cum eo qui reſponderit, capite punitur.*

Paul. ſenten. lib. 5 *tit.* 21. *Cuiac. ad tit. Cod. de Maleficis.*

† *Cauſ.* 3. *quæſt.* 5. *c.* 9. Deut. 18. Lev. 20. & 19.

* *Confeſſ. lib.* 7. *c.* 6.

with ſtrong deluſions; *quæ turbant animos & ad novas aut magnas ſpes impellunt. Nunquam curioſitas & cupiditas conjuncta cum avaritia & ſuperſtitione cognoſcendi res futuras, neque Gentilibus, neque iis qui Chriſtiani perhiberi voluerunt, impunis vel innoxia fuit.* The raiſers of a dangerous ſedition in *York-ſhire*, in the reign of *Edward* the ſixth, took their riſe and encouragement from a dark and deceivable Propheſie, and underſtood that to be the time to accompliſh that Propheſie, which did ſortel the time ſhould come, when there ſhould be no King, and that the Nobility and Gentry ſhould be deſtroyed, and the Realm ruled by the Commons holding a Parliament in commotion. The Duke of *Savoy* not to condeſcend unto equal conditions of Peace with *Henry* the fourth of *France*, was drawn by a Propheſie, that at ſuch a time there ſhould be no King in *France*; which had ſomething of truth, for the King of *France* was that year in *Savoy*, and in the purſuit of his Conqueſt thereof. And yet notwithſtanding, ſuch is the deſire of men to know things to come, that theſe Aſtrologers and Southſayers gain more credit by foretelling one truth, then they do diſcredit by ten falſities; whereas others, if they lye in one thing, are ſcarce ever believed in any truth they relate.

Lipſii monita Polit.

Ælian. var. hiſt. lib. 3. c. 3.

Heyward in Edw. 6.

Thuan. lib. 125.

Religion and reformation, as was ſaid before, have ever been pretended by thoſe who have had pernicious deſigns; and factious and ambitious men have often taken hold of the diſſentions concerning religion, to work the people to a compliance with them: Theſe men convert Religion under falſe and ſpecious pretences into faction; or uſe religion like a ſtalking horſe, as did *Jeroboam* and *Mahomet*, *Qui nervum potentiæ ſuæ in novæ Religionis formulâ ad affectus hominum inflexâ ponebant.* * The changes in religion have often wrought great changes in the minds and manners of men: whereupon the ſaying is grounded *A new religion, and a new Prince or government.* The Popes Nuncio hearing *Francis* the firſt of *France*, uſe ſharp ſpeeches againſt the Pope, and ſaying he would withdraw his Subjects obedience from

* *Jeroboam* uſurped and *Iſrael* rebelled againſt the houſe of *David*; *Jeroboam* changed the publick ſervice of God and alſo the place from *Jeruſalem* to *Bethel* and to *Dan*; for if the people went up to *Jeruſalem* to ſacrifice, he feared their hearts would turn to *Rehoboam* their King, and the Kingdome return again to the houſe of *David*: and he made Prieſts of the loweſt of the People, which were not of the ſons of *Levi*, 1 *King.* 12.

from the Sea of *Rome* in things of Eccleſiaſtical Diſcipline, the Nuncio replied, that his Majeſty would be a loſer thereby as much as the Pope, for a new Religion, if it took the People in the head, would draw them on to the deſire of changing their King, or Government. Unity in Religion being the chiefeſt pillar that upholdeth the joynt obedience of the Subjects to their Soveraign, and to the Lawes of their Countrey. For where they are not united in their Religion, they are not united in their Obedience to their Soveraign, neither in their affections to their fellow ſubjects, but are ever apt to fall into ſeditions; and of this there are many examples in this latter age. Not to come nearer unto us, I will rather chooſe to relate that of the *Moors* in *Spain*, who notwithſtanding all the endeavours of the Emperour *Charles* the fifth, and his Succeſſors, could never be made good Subjects or Chriſtians: they only pretended a deſire of liberty of Conſcience, which they thought they could never obtain, unleſs they had a King and Lawes according to their will, whereupon they entred into a moſt dangerous conſpiracy, and took up arms. The Proverb was true, *never of a good Moore, a good Chriſtian.* Their King ſaid of them, that they would never be faithful to God, who would never be faithful to their King. It was truly obſerved of ſuch inconſtant People, *Melius vatibus ſuis quam Regibus ſuis parent*, a new Apoſtle is more precious then King or Lawes: How often, ſaith *Lipſius*, of old and of late times, to the great peril of Princes and Common-wealths, *Prava aut nova religionis titulo populum concitatum fuiſſe, unus aliquis concionator ſanctimoniæ famâ & telo armatus, & eloquentiâ aliquâ ornatus, quid non patrat?* Of ſuch men the Prophets often gave warning, who flatter the people, and propheſie lies in Gods name. For this cauſe of Religion men become wolves to each other: in this fury they abandon all reſpects civil and natural: *The brother delivereth up the brother, and the father the childe to death.* This made certain Jewes bind themſelves under a curſe, *that they would never eat nor drink until they had killed St. Paul.* Experience hath proved that there is no cruelty comparable to theirs, who have taken on them the name of the Church, neither any ſo dangerous evil, as that which carrieth the face and pretence of Religion. King James deſcribeth

Fonſeca of the expulſion of the *Moores.*

Hiſt. of *Spain.* *Curtius.*

Monita Pol.

Matth. 10.

Act. 23.

ſuch

ſuch Puritans as he had long trial of in *Scotland*, and ſaith, Inſtruct. to
" they are the very Peſts of the Church and Common-wealth, his ſon.
" whom no deſerts can oblige, neither promiſes or oathes binde,
" breathing nothing but ſeditions and calumnies, aſpiring with-
" out meaſure, railing without reaſon, making their own ima-
" ginations without warrant of the Word of God, the rule of
" their actions. St. *Bernard* doth make mention of the like Serm. 66.
men in his time, *Qui nec rationibus convincuntur, quia non* Cant.
intelligunt, nec autoritatibus corriguntur, quia non recipiunt, nec flectuntur ſuaſionibus quia ſubverſi ſunt. Of the like men by the unſearchable Judgment of God, our King his Son had the like experience, but with much worſe ſucceſs. It were a work of time, and a labour to little purpoſe, to relate the ſeveral Sects which now do ſwarm; for ſometimes their doctrine doth differ from their practiſe, and ſome of their errors are oppoſite to others, although they ſpring from the ſame root. And it is meet that errors ſhould be divided, into ſundry ſerpentine heads, one hiſſing againſt another: howſoever they are tyed together by the tails like *Samſon*'s Foxes, to ſet fire both in the Church and Common-wealth. *In cun-* D. Bernard.
ctis aſſertionibus eorum licet multæ ſunt, nec novum quid aut Serm. 65.
inauditum audiſſe me recolo, ſed quod tritum eſt & diu ventilatum inter antiquos hæreticos, à noſtris autem contritum & eventilatum. The Eccleſiaſtical Hiſtories do mention ſuch Peſts to have been anciently in the Church, and theſe of our Age ſeem to be of their ſeed, and of the ſame leven and mould. *Euſebius* ſaith, that whileſt new Hereſies ſprang up, creeping Eccleſ. hiſt.
one upon another, the latter taking place, the former did ſeem lib. 4. cap. 7.
to vaniſh, or ſubdivide into many Sects, changing this way, or that way until they were deſtroyed, or grown obſolete and out of requeſt. For the Church being once divided, they reſted not upon any one Schiſm or Sect, but they fell out and Socrat. Eccl.
ſevered themſelves upon ſlight and trivial matters. People di- hiſt.
vided in religion ſeldome agree in matters ſecular: neither can religion be ſafe, when the Common-wealth is rent by civil diſcord; both ſuffer together, in, by and through each other. When the Common-wealth hath been toſſed with Socrat. Prooem.
diſſentions, the Church hath not been quiet, both at one time ad lib. 5. Eccl.
out of ſquare, or the ones calamity enſued immediately after hiſt.

the others. And sometime when the Church began to vary in religion immediately followed rebellion against the Civil Magistrate. But we can find none, or very few of those many ancient Hereticks, Sectaries, or Schismaticks quarrel with Episcopacy, but all these of our time jump together in no one point so near as they do against Episcopacy. Those Christians who are now dispersed in divers parts of *Africa* and *Asia*, although they are of different Sects, do not admit of any other form in Ecclesiastical Government but Episcopal; in this they agree. The ancient Hereticks and Schismaticks, who were as subtle men as these new, did not quarrel at the Function, so as they might have had Bishops of their own side, or have been Bishops themselves: Their envy towards others, or their desire of being preferred before others made many become patrons of Heresies, to the great prejudice of the Church, and the peace thereof. Concerning the opposition against Episcopacy and Ecclesiastical Discipline (wherein full defence hath been made by divers learned and pious men) I shall not say much, although the matter deserveth to be more fully and exactly handled. Much may be said against the tyranny and superstition under the Papacy, and against other abuses, and personal faults, yet may we not thereby infer a necessity of the change of the Episcopal order and office into Presbytery, which is subject to as many and great abuses, as they finde who live under it. It is not without just cause that those men who would be reputed learned and pious should receive blame, for their so eager and bitter contesting against the superiority of one man in Church Government, even to the rending of the Church in pieces; when they do not define or declare by the Scriptures, notwithstanding all their labour what is of necessary and perpetual obligation in this controversie. And of all those things which they have urged in their own behalf as greatly necessary for Church Government, there is no one which they have proved to be contained in Scripture, and injoyned for perpetuity: but in stead of this proof, they obtrude conjectural and slight interpretations, uncertain probabilities, and as weak inferences in opposition of the primitive and continual judgement and practise of the Church. Until the blessed Apostles left the world, there could be but little shew of superiority in any

any but in them, and in those whom the Apostles constituted Superiours, as *Timothy* and *Titus*: and immediately after them there was shew enough in the Churches planted by them, if we will give credit to all the stories of Antiquity, and value the practice of the Primitive Church, when the Scripture was best understood, and godlinesse did most abound. Our Saviour did approve of superiority in the Church, so as it were without pride and tyranny, by his saying, *He that is greatest amongst you, let him be as the younger, and he that is cheife, as he that doth serve.* And that Saint *James* was established the first Bishop of *Jerusalem* cannot be gainsaid. Saint *Jerome* whom the Presbytery account most favourable to their cause of all the Antients, and most against the granting Episcopacy to be of Divine right, he saith, *Et Alexandriæ à Marco Evangelista usque ad Heraclam & Dionysium Episcopos, Presbyteri semper unum ex se electum in excelsiori gradu collocatum Episcopum nominabant. Olim idem erat Episcopus & Presbyter, sed sciunt Presbyteri ex Ecclesiæ consuetudine, & in toto orbe decretum esse ut unus de Presbyteris electus superponeretur cæteris, ad quem omnis Ecclesiæ cura pertineret; & in schismatis remedium factum est, ut schismatum semina tollerentur; ne unusquisque ad se trahens Christi Ecclesiam rumperet.* The time neareſt the Apostles ought to be herein our best Directory and interpreter: *Observantia proxima valde interpretativa, & dat fidem aut minuit.*

2 Cor. 8. 23.

Luke 22. 26.

Vide Distinct. 93. c. 4. & *distinct.* 95. c. 5.

The Apostolical and Primitive practice rather then the late discipline and example of some reformed Churches, who as much of necessity as of election are fallen for the most of them unto a form of Presbyterian discipline, of which they find no use nor Character in the Primitive time. And therefore they shew little candor and sincerity, who so peremptorily defend this Presbyterian discipline, and with detraction and detestation of Episcopal Government, seeing it hath been fully proved by Learned men, that the office and power of a Bishop, made ever a great difference betwixt him and a Presbyter. Neither can they conclude any thing for their advantage by the promiscuous use of those two names at the first, at which they catch. It

cannot be called one and the self same order, where the offices are distinct: *Diversi tituli præbent regulariter significationem diversi juris.* * If the offices and things are distinct, it availeth little the insisting upon words and names promiscuously used. There is not one and the same imposition of hands; and shall not it be a distinct order in it self, from whence ordination and all other orders do and ever did proceed untill of late time. Neither was the office and power of a Bishop lessened by the assistance and counsel of certain Presbyters, called *Senatus Ecclesiæ*, but rather strengthened and supported by that antient and laudable course. There doth not appear in Scripture any commission given to any assembly of Presbyters by our Saviour to govern the Church without a Bishop or Superiour in whom was the power of Ordination and Imposition of hands; although by the antient Canons, *Episcopus sine consilio Clericorum suorum Clericos non ordinet, ita ut Civium conniventiam, & testimonium quærat.* Neither is there any example in Scripture of any delegation of power of Censures or Government derived from the Apostles to any Colledge or Assembly of meer Presbyters. If these men will peruse the Canons of the four first general Councils, which *Calvin* saith, *libenter amplectimur & reveremur*, they shall find enough to justifie the office and superiority of Bishops, and to give them satisfaction of the necessity of that Function, if wilfull ignorance and the spirit of delusion and contention doth not still prevail. They cannot shew that ever any Church upon the face of the earth hath ever been ordered by their discipline, untill this later age, or hath not ever been under Episcopal government since the Apostles time. * Neither can they by their doctrine and manners, or by any other means induce those who are in no respect behind them in learning, prudence and piety, to believe that they

* *Episcopatus est ordo distinctus, in quantum est officium quoddam, ad sacras actiones.* Aquinas. *Episcopatus juxta veriorem & receptiorem sententiam Canonistarum & Theologorum, ordo est; quatenus ordo dicitur officium quoddam & potestas, respectu quarundam sacratum actionum quæ sacerdoti non conveniunt.* Conarunias variarum resolut. lib. 1. c. 10. Amongst Gods selected people there was the high Priest, the chief Governour of the house of the Lord. Jer. 20. 1. Numb. 3 32.

Distinctio 24. c. 6. causa 15. quæst. 7.

Institut. 4. c. 19. Et in lege Constantini Imperatoris, sancimus vim legum obtinere Sanctas Ecclesiasticas regulas quæ à Sanctis quatuor primis Conciliis expositæ sunt. Novell. 131. cap. 1. distinctio 15. c. 2.

* *Exceptis Hæreticis Macedonianis qui pro certo tempore non habebant Episcopum, sed sub solis Presbyteriis erant. Sosomen. Eccles. hist. lib. 8. c. 1.*

they and not others have had the clearer lights, and more divine inſpirations. Saint *Paul* meeting with ſuch men, ſaith unto them, *What came the word of God out from you, or came it onely unto you? Take heed that the light which is in thee be not darkneſs.* 1 Cor. 14. 36. Luk. 11. 35.

Chap. II.

Of the Presbyterian Government in the Church; The practice in the Primitive times; Touching the election of Paſtors and Miniſters in the Church, and their maintenance by paiment of Tythes

AS they would have it granted that their Presbyterian Government is onely of Divine right, ſo would they alſo have it granted, that nothing is to be uſed in Church Government, but that which hath direct and expreſs warrant in Scripture, and that all diſcipline and order in the Church, ought to be reduced to the primary purity of the Church, which is not poſſible in many things, neither neceſſary or expedient in theſe corrupt times, and latter age of the world. An exact form for all Church government and diſcipline is not to be found expreſſed in the Scripture. For one cauſe of ſo many general Councils in the firſt times, and ſhortly after, was to make Canons and Conſtitutions for the external Government of the Church, which had not needed, if ſuch a perfect Platform had been delivered in the Scripture, as theſe men do imagine. We find of neceſſity, *Aliter in conſtituta Eccleſia, aliter in conſtituenda.* Some things are fit for the preſent, which for the times paſt were not convenient, according to the old ſaying, *Nunc aliud tempus, alii pro tempore mores. Cicero* had juſt cauſe to be diſpleaſed with *Cato*, who living in a corrupt State, ſought to have all things carried as though he had lived in *Plato's* Common wealth. New lawes may be made, but not new men, neither the preſent manners of men altered, or reduced to the old. It was wiſely ſaid in the Imperial Law, That the looking

looking back too curiously into the times of old, and seeking to reduce the present to that which was past, *erat confusionis potius quam legislationis.* Laws look not back, they may well be made to look forward, and for the future, but they must of necessity be made fit for the present time, which man cannot over-rule. *Legum opportunitates & medelas pro temporum moribus, & pro rerum publicarum generibus, & pro utilitate præsentium mutari atque flecti.* The ancient good discipline may well serve for our instruction, which neither may, nor can all serve for our imitation. Respect is to be had unto the times of old, and we are instructed by Gods word to ask of the dayes of old, to remember the dayes past, to ask for the old paths, but not injoyned to follow them in all things, and in all times. We finde in the Scripture things of Apostolical institution, changeable, and not appointed for perpetuity. Many offices and ministeries in the Church at first were soone changed, as the electing of widows for some services; the manner of instituting and ordering of Pastors and Elders (not lay Elders) and for the raising their maintenace, which in the primitive times when the Church was in the Infancy, and under Persecution, before Tythes were established, did rise from the free Benevolence of men, who were of one heart and one soul, and sold their goods, and laid the moneys at the Apostles feet: those who held the unity of the Spirit in the bond of Peace, and needed not the tye and coercive Power of Lawes: *Talem primum Christianorum conventum fuisse, quales monachi esse imitentur et cupiant esse, ut nihil cujusquam proprium sit, nullus inter eos dives, nullus pauper: nec confundebant Christiani dominia; bona e-gentibus in commune conferebant ut perinde ac domini eis uterentur, fruerentur.* But now how ill would it be, if all kind of standing provision for the Church, and for the Ministery were taken away and their estate made dependent again upon the voluntary devotion of men, and subject to the mutability of times and changes in Common-wealths; as likewise if the people should now have that power as at first, in choosing their Pastors and ministers? The people in the primitive times, if they had a great power and part in the election of their Pastors, they well deserved it in respect of their great Piety, and moderation. It were very inconvenient they should now use the same course in their elections,

Aul. Gel. lib. 20. c. 1.

Jerem. 6. 16.

Acts 4.

D. Hieron. ms.

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ons, seeing the people are over numerous and humorous, diversly and contrarily affected and disaffected, as are likewise the Ministers and Clergy. Such power doth not appear to be given to the people by Gods word, as they who flatter them do pretend. In the Council of *Laodicea* those popular elections were forbidden, which prohibition *Origen* saith was in his time, in respect they were carried with tumultuous clamors, favours and rewards. *Calvin* writing of the choosing of Ministers, and of those who ought to have the choice, he doth not grant it to the people, but saith *hujus rei certa regula peti non potest*. And in the Church of *Geneva*, there is not any or very small sign of any Popular Election. We find in the Primitive times the Peoples concurrence by some suffrage or approbation, *per signum, sermonem, aut silentium liberum*; and this is as much as is now allowed them by the best Divines of the Presbytery: *Ita ut omnes audiantur qui ordinationis impediendæ causa objicere quidpiam voluerunt*, as in the ancient Canons. But there are varieties of judgements in divers Canons concerning the election of Pastors, as whether it must be in the presence of many standers by, or at the request of the people, or with their testimony, or with their consent, or by their election and voices. And then it is a question whether the greater number present, shall by their voices conclude all the absent who are interessed, although they are the greater number.

Instit lib.4.c.3. num.13.

Cap. ult. de electio. Duarenus & Alii. D. Cyprian. epist. 4. lib.1.

* This popular concurrence in these elections is almost universally abolished (some character thereof may remain in some Churches) and it is swallowed up in the right of Patronage of Churches; for when Princes and Lords of Mannors erected and endowed Churches, and thereby much disburthened the People by being thus beneficial unto their Churches and Pastors; those Lords for their bounty, were called and constituted Patrons of those Churches, and had the right of Presentation of Clerks to them and their heirs in those Churches. *Qui Ecclesiam edificat, aut de suo præbet Clericis annonas, jus habet instituendi & substituendi Clericos, dummodo eos prius commendaverit Episcopo, qui eos admittere debeat, si Dei ministerio digni sint,*

** Ut sit in Electione Clericorum consensus Cleri, & Plebis & Honoratorum Testimonium: Imperatoribus vero & Principibus electiones Romanorum Pontificum atque aliorum Episcoporum referendas esse, usus & constitutio tradidit, pro schismaticorum atque hæreticorum dissentionibus quibus nonnunquam Ecclesia Dei concussa periclitabatur. Distinctio 63. cap. 26,27. Ita erat per vetustiores Canones,*

Novel. 57. & 123. cap. 18.

ſint, as it is in the Imperial Law. And ſo by the Canon Law, *Hoc jus nominandi ſeu præſentandi Clericum competit ei, qui fundavit, vel collapſam Eccleſiam reſtituit, vel dotavit, vel reditum certum largitus fuerit.* This right of Patronage and preſentation to Benefices the Common Law and Statutes of England do grant, and the lawes and cuſtomes of other Kingdomes, as well as the Civil and Canon-lawes. So as the Clergy men are not conſtrained to live any longer upon a part of thoſe common contributions and dividents of monies raiſed in the infancy of the Church, of gifts proceeding from the pious zeal of ancient and venerable Chriſtianity, but upon their Tythes and Glebe-lands aſſigned unto them: and the Pariſhes alſo being ſet out and divided, and ſeveral Paſtors placed in Churches under the Biſhops of ſeveral Dioceſſes. And yet diverſe men through a wilde fancy, or to flatter the people, as they would have the power of electing the Paſtors to be in the people, ſo would they have their maintenance left unto their will, or to the mutable and arbitrary orders and decrees of Judges and Magiſtrates; which would be a ready way to bring the Clergy into poverty and contempt, as being then reputed but as Alms-men of the People, or as Tenants at will. Others would have their maintenance ſet out and aſſigned in money, and not in Tithes. Some quarrel with Tithes out of covetouſneſs, ſome through ignorance, not conſidering that Tithes have been out of much prudence and equity anciently and univerſally dedicated to the neceſſary ſervice of God and his Church, or rather ſtill continued ſince the Leviticall Prieſthood was aboliſhed, and they will ever appear upon due conſideration had of all times and things, to be the moſt neceſſary, natural and equal, and in all reſpects the beſt maintenance for the Clergy, and ſubject to leaſt exceptions and inconveniences. And let them alſo conſider who ſo little regard Tithes, and think they were due only by the Ceremoniall Law of the Jewes, and not by Evangelicall Precept, whether being ſince againe reſtored and dedicated univerſally under the Goſpel by poſitive lawes and cuſtomes of nations to the neceſſary ſervice of God and ſuſtinance of the Clergy (which is required of us by the expreſſe Evangelical law) they are not now become again a ſacred tribute and Gods right. *Ananias* keeping back a part of the

C filiis 17. quæſt. 7. Duaren. de benefic. & miniſt. Eccleſ. lib. 3. c. 4.

the money conſecrated to the ſervice of God and his Church; we find how he was puniſhed for his ſacriledge. *Quod divini juris eſt, nullius eſt in bonis: Res religioni deſtinatas, & jam religionis effectas, qui ſcienter emere & diſtrahere non dubitaverint, tametſi jure venditio non ſubſiſtit, laſa tamen religionis inciderunt in crimen. Sunt tamen aliquæ res Eccleſiaſticæ, quæ non deputantur ad Altaris miniſterium, nec ad cultus divini celebrationem, ut domus, agri, prata & ſimilia; quæ ſunt bona temporalia Eccleſiæ quæ poſſunt certis caſibus alienari: licet lege imperiali indiſtinctè dicitur, Patrimonium Eccleſiæ, ſicut ipſam ſacroſanctam Eccleſiam, illæſum & intactum cuſtodiri.* If they will have a ſtipend in money to take place in lieu of Tithes, when the thing it ſelf may as well be had, and with more reaſon be retained, what reaſon have we then to look after the Analogy and ſubſtituting of a new thing of a different nature? The Apoſtle ſaith, there was a diſannulling of the Commandment for the weakneſs and unprofitableneſs thereof: but this old Law of Tithes cannot be in the rank of the weak & unprofitable Ceremonial Lawes, which were a ſhadow of things to come. Neither can they prove that Tithes were only appropriated to the Levitical Prieſthood; God did not found them in that incorporation, but transferred his own right to that order of Prieſthood, which order ceaſing it cannot therefore be inferred that the ſame right ceaſed, and did not deſcend to the Evangelical miniſtry. Before the Law given *Abraham* paid, and Jacob vowed the Tenth part. And the Gentiles who lived without the Divine poſitive law, did repute the Tenth part as a due by a religious Right, as profane Authors do teſtifie. God did call the detaining of Tithes the robbing of him, and for puniſhment thereof the Heavens were ſhut up from giving raine, and the palmer-worm and the graſhopper ſent to devour the fruits of the earth. God is no leſs careful of the Miniſters of the Goſpel of his Son, our Saviour, then he was of the Levitical Prieſthood: the Miniſtery of the Goſpel being more excellent in nature, more eminent in dignity, more profitable in uſe; and therefore we ought alſo to account of our Paſtors as the Miniſters of Chriſt, and ſtewards of the miſteries of God.*

Acts 5. *Inſtitut. de rerum diviſione.* L. 1. *Cod. de Sepulch. violat. Res quam devoverit quis Jehova, ſancta ſanctorum eſt Jehovæ.* Lev. 27. 28. *Covarruvias. Duarenius & alii.* L. 14. *Cod. de Sacr. Eccleſ. ſub pœna Sacrilegii. Novel.* 7. c. 10. Heb 7.

Malach. 3.

* *Plerique dicunt, præceptum de decimis Leviticis ſolvendis non omnino Ceremoniale, aut Judiciale, ſed morale fuiſſe, atque ſub lege etiam Evangelica vigere, nec antiquatum fuiſſe. Ita ut decimas etiam hodie, Jure naturali, divino ac Evangelico debitas eſſe. Alii*

dicunt decimas quantum ad quotam partem, quæ verè decima pars eſt, jure humano inſtitutas fuiſſe ſub lege Evangelica, nec earum inſtitutio eſt hodie, ex jure naturali aut divino, quo ad certam quantitatem, ſed ad congruam ſuſtentationem Clericorum, & in laboris impenſi juſtam mercedem. Covarruvias. The objection made, that Tithes were due by the Levitical law which is now aboliſhed under the Goſpel, is of little weight: which although it be granted, yet thoſe judicial Judaical laws do ſtill retain *vim exemplarem*, although not *obligativam*, *& cum divinitus inſtitutæ ſint, in iis oſtenditur quid Deus approbavit, & deſervire poſſunt per modum exemplarium, ſeu directivum, ad imitandam prudentiam & equitatem earum in multis*: and as *Calvin* ſaith, *lib.* 4. *c.* 4. *num.* 1. *Inſtitut. In iis rebus utile erit veteris Eccleſiæ formam recognoſcere, quæ nobis divinæ inſtitutionis imaginem quandam oculis repræſentabit.*

Chap. III.

The inconveniences that happen by the alterations of Government, in the Church and Common-wealth; Of Ceremonies uſed in the Church-Service; Of tender conſciences; Of the coercive power of the Magiſtrate in matters of Religion.

Although it be true that all the Divine Laws extend not their power of binding in all times, and to all perſons; and that poſitive Laws Eccleſiaſtical muſt be fitted to the times and manners of men, as hath been ſaid before, yet great conſideration ought to be taken, of the difference and variations of times, and of other circumſtances, reaſons, and inconveniences, before any new Laws, Orders or Diſcipline either in the Church or Common-wealth be impoſed, or the old and inveterate Lawes and cuſtomes repealed and abrogated. *Ariſtotle* ſaith, That to give a ſound judgement of a Law, is one of the weightieſt things that a man can take upon him; for we ought not onely to look ſimply upon the nature and quality of the things in themſelves, and in abſtract, but how they ſtand in relation, and connexion with other matters and things of long eſtabliſhment, and of great importance, leſt by the removal of that againſt which our fancy doth run, we indanger the ſhaking, if not the ſubverting of it, and other things, which the tryal of time hath found very profitable and neceſſary. *Tales leges quas ne uſus quidem longo tempore (qui unus eſt legum*

gum corrector) experiendo argueret : tales leges tollendo, ceteras leges infirmari : And ſo the People learn to undervalue all Laws of what kind ſoever, and to repute them of no weight and efficacy, longer then they are ſupported by the hand of Authority. Livius.

*Some things which are not unlawful or evil in themſelves, are oftentimes well prohibited, when there is juſt cauſe of fear, leſt a way be opened for doing of things unlawful and hurtful : So doth it often fall out, that ſome things unneceſſary in themſelves, as to the purpoſe and end whereunto they were at firſt applyed, are very prudently ſtill retained, in reſpect of ſome new accidents ariſing, or by reaſon of the coherence they have with ſome other thing of greater uſe and neceſſity, leſt the taking away of the one ſhould deſtroy the others, and bring diſorder and confuſion in the Common-wealth. It was well ſaid by a man of great Judgement ; that he could not approve of the utter aboliſhing of certain antient cuſtomes, although groſly abuſed, ſeeing the inconveniences that thereby would enſue ; but rather that ſome redreſs or qualification were ſought by the prudence of thoſe in Authority. *Sapiens potius aptat quam mutat.* Saint *Auguſtine* ſaith, of ſome evils in the Romane State which were long ſetled, *tam vetuſtam iniquitatem convellere, periculoſum erat :* for it fareth better with that Common-wealth, which doth obſerve and keep their antient Laws and cuſtomes, although they are not of the beſt, then with thoſe, who have the beſt, and are inconſtant in the uſe and obſervation of them. *Julius Cæſar* ſaid of *Cato* his mortal enemy, that he ſhewed himſelf both a good man, and a good Citizen, by oppoſing the changes of the State and Government : *mutationes in Republica cades & hoſtilia portendunt*, eſpecially if the changes and alterations are driven on by violent and pertinacious Spirits, who if they obtain their deſire in having any antient Laws and cuſtomes changed, their Countrey ſhall find the ſmart, as did the Roman State, when the Senate yielded thereunto, *quia non providerunt, ad quod tenderet pertinax ſtudium eorum, & quò ſe uſque effuſura eſſet victrix legum audacia : tentari patientiam, & tentatam*

* *Leges quæ non in tempus aliquod, ſed perpetuæ utilitatis cauſa in æternum latæ ſunt, non ſunt abrogandæ, niſi quas aut uſus coarguit aut ſtatus aliquis Reipublicæ inutiles fecit.* Livius lib. 34. *Non ob quamcunque cauſam melius quidpiam adferentem mutanda eſt lex, ſed tunc quando uſque adeò excedit, ut damna detrimentaque compenſat, quæ legis mutatio, ſuâ apſâ naturâ ſecum affert.* Soto de Juſtitia & jure.

Hooker. Eccleſ. Politic.

Dionyſ. Halicar.

Seneca.

Thucydides.

Saluſt.

Valerius Max. lib. 9. cap. 1.

Livius lib. 1.

tatam contemni, ut ſi jugum acceperint, obnoxios premat. As ſome men ask unreaſonable things, but to draw others to yield unto that which is reaſonable, ſo others by granting unto ſome men more then reaſon doth require, do imbolden them to preſs more unjuſt and inſolent demands. The alterations in the State and Government procured by thoſe who have the ſupream authority, if they are not diſcreetly handled, and effected by degrees in an orderly courſe, and carried ſtill on with the eaſe and contentment of the people, they will in ſhort time be diſquieted, and either turne back into the old way like ſheep driven, or violently run head-long into ſome new. *Jus quod invaluit, quod viget, quod inhæret animis hominum, non ſemel ſed pedetentim tollendum eſſe, quoniam Populus non facile dediſcit aut deuitur quod inſuevit.* And therefore thoſe Innovators who try experiments upon a State, and upon the peoples diſaffection to the preſent government, and thereupon lay the cheif foundation of their deſigns, without ſome other ſtronger aſſurance, have often failed, and have found themſelves and others with them utterly ruined, through the ſuddain and violent ebbing and flowing of the Peoples paſſions and affections. The fear of this cauſed the Roman State, when they had expulſed their King *Tarquin*, not to reſt upon the Peoples preſent violent hatred of the Regal Governmeut, and their oath freely taken, never to admit Monarchy, but for the future ſecurity of their uſurped Government, the Senate gave the People the ſpoil of all the Kings goods, and of theirs who adhered unto him, *ne quis expers ſceleris eſſet*, ſaith *Livie*, that there might not be any who had not a hand in that foul fact: and thus to ſet farther all hope of reconciliation with their King: yet unto this the Senate added (as the moſt effectual means to aſſure the Peoples affection) their continual care for proviſion of corn, victuals and all neceſſaries at cheap rates, together with freeing the Commons from heavy taxes and burthens, and laying them upon men of moſt wealth and ability, and upon Commodities ſuperfluous and leaſt neceſſary. For the State being not come unto full growth and maturity, might by many accidents have been deſtroyed, had it not been foſtered and trained up *per tranquillam moderationem Imperii, et per multa blandimenta Plebi per id tempus ab Senatu data*, by a gratious Goverment, and

Saluſt.

Livius.

and by entertaning the Commons at that time with courteſies and favours. By which ſmooth dealing and indulgence of the Senate and Nobles, the City was afterwards kept in liking of their new Government, notwithſtanding the ſtrong oppoſition of the *Tarquines* and their party, ſo as the meaneſt as well as the higheſt who were moſt ingaged and intereſſed, continued altogether in the hatred of Monarchical Government, and in the love of the new. The alterations in the Church and the government thereof how pernicious they are, we find, eſpecially being wrought by faction, violence and tumults, *Vim Patriæ afferri*, as *Cicero* ſaith: Theſe cauſe great diſtractions in the minds of men, raiſe daily croſs and counterſpirits, occaſion the Religion profeſſed and eſtabliſhed to be traduced, and do open an entrance to Atheiſm, and to the weaking of all thoſe ſacred bonds, which preſerve all Laws and obligations in humane ſociety: For then oaths are not regarded by thoſe men, nor the conſciences of any other men, in their preſſing theſe Alterations in the Church, neither the conſcience of their Soveraign, nor his ſolemn oath at his Coronation, which oath is a ſupporter, and an Epitome of our *Magna Charta*, the confirmation of all our liberties. By which oath the King is obliged to ſave and keep inviolable all the rights and liberties of his People, and alſo thoſe of the Church. This oath they inforce the King to break in as much as concerneth the Church and the rights thereof, and leave the People to the challenge of their rights and liberties by and from the vertue of this broken oath. In both Kingdoms of *England* and *Scotland* he took an oath, *de conſervandâ in ſtatu ſuo illo colendi Dei formulâ quæ publicè recepta & utriuſque gentis legibus ſtabilita eſſet*. Their conſciences ſome of them would ſeem much to regard this, in which reſpect, they pretend, that they cannot admit the Common-Prayer Book, neither thoſe Ceremonies in the Church which are by Law eſtabliſhed: and yet moſt of them although they cannot ſwallow a ceremony, they can devour that which is holy, and account it no ſnare, even as eaſily as they can digeſt their wilful breach and violation of the oaths of Supremacy and Allegiance, *in ordine ad ſpiritualia*, for the advancement of the holy cauſe, and the Kingdome of Chriſt. But *Calvin* giveth them a rule for their conſciences concerning Church Govern-

Epiſc. Winton. Tortur. Torr.

Prov. 20. 25.

Government, and concurreth with *Melanchthon*, men in great eſteem when their Presbytery was in the infancy, *viz. aliquando aliquod onus & aliquam ſervitutem tolerandam eſſe, ſi non ſit iniquitatis ſed preſſuræ*, leſt by being over indulgent to our weak and erroneous conſciences, we give an offence to others, violate the Peace of the Church, and ſhew our contempt of Authority, and of that which hath been eſtabliſhed with prudence and piety. We ought well to conſider what things are of Divine right and precept, and what are properly, poſitive and Eccleſiaſtical conſtitutions; what things are of Divine Right according to the matter and ſubſtance, and are of humane inſtitution according to their forms preſcribed: All are of weight, although not equally: What ought to be perpetual in the Church, and what is changeable by poſitive Laws; What is Moral, what is Ceremonial, leſt the defects of our judgement cauſe us to abound in our own ſenſe, and lead us into an erroneous or perplexed conſcience. Some things are of Divine inſtitution and right, yet do not alwayes belong unto faith; they belong to the *agenda* or practiſe of the Church, to the *credenda* or points of faith, they may not properly be referred: Somewhat may be wanting that is of Divine right, at leaſt in the external Government of a Church, and yet ſalvation may be had there, and that Church may ſtand without it. Moreover, although the conſtitutions of men, are not of force in themſelves to bind the conſcience, yet do men ſin in wilfully diſobeying ſuch Laws and conſtitutions, as are by Lawful Authority eſtabliſhed, when they can ſhew no other cauſe for their diſobedience, but their conſcience, neither bring any warrant out of Gods Word. In the ſuppoſed pureſt reformed Chuches, there are ſome Ceremonies enjoyned, and are not without puniſhment contemned, and ſome muſt be if we will ſerve God in the beauty of holineſs. *Calvin* alloweth ſuch Ceremonies as tend to the perſpicuity of doctrine, as being profitable alluſions and illuſtrations, and having divine ſignifications: ſuch Ceremonies, ſaith he, as are *paucæ numero, obſervatione faciles, ſignificatione præſtantiſſimæ*. In the miniſtry of the Church there ever have been ſome Ceremonies ordained for order and decency, and alſo for ſignification: Ceremonies tending to edification ſignifie,

Biſh. of Wincheſt. Epiſt to P. Moulin.

Pſalm 29.

nifie, moral duties and works are ſignified. Such rights and Ceremonies as are not repugnant to Gods Word, neither apt to lead men into ſuperſtition and to will-worſhip, but ſerving to edification and decent ſervice, ſo as the Church be not burthened with the multitude of them, nor the eſſence of Religion placed in them, although ſome of them have been in part uſed by Pagans or Papiſts, leſt upon ſuch reſtraint we preſs too much ſervitude upon the Church. We cannot take in too many helps for our performance of Religious duties, for the exaltation of Gods glory and goodneſs, for the more decency in his ſervice, for the manifeſtation of our duty of thankfulneſs, and for the furtherance of our devotion, ſo as Superſtition and Will-worſhip be reſtrained. And in all this if men ſhould be left to their own wills, the Church of God would alwayes be perplexed and grieved, and the peace thereof diſturbed with infinite Scandals both given and taken. A great evil it were that order and decency ſhould break the Communion of Saints, which hath been ſo piouſly inſtituted for the preſervation thereof, and the increaſe of devotion, and the manifeſtation of our thankfulneſs to God for all his benefits. They ought to find other cauſes for their diſlike of Ceremonies, then becauſe ſome of them were uſed in time of Popery. The Reformed Churches retain ſome things uſed in the Romane Church. And they uſe the Churches, which not onely the Papiſts enjoyed, but ſome Churches which had been Temples of the Pagan gods. If they quarrel with our Ceremonies, becauſe they were uſed in the Roman Church, without any other reaſon, they are like thoſe who hate men for other mens ſake, or becauſe of the company wherein they find them. They will not conſider that thoſe things which have been ſuperſtitiouſly abuſed, may be made uſeful for the ſervice of God, who did command the wood of the Grove dedicated to *Baal*, to ſerve for the uſe of his Sacrifice. And *Jericho* an accurſed City, all in it was to be deſtroyed by fire, but the ſilver and gold, the veſſels of braſs and iron were put into the Houſe of God. *Conſtantine* and other Chriſtian Emperours aboliſhed Paganiſm, and made it death to worſhip their gods, yet they preſerved their Temples and other things, as appeareth by the Imperial Law: *Sacrificia templorum prohibe-*

Judges 6.

Joſhua 6.

L. 3. *&* *l.* 4. *Cod. de Paganis.*

bemus; publicorum operum ornamenta ſervari jubemus, & feſtos conventus civium, communemque omnium lætitiam non patimur ſubmoveri, unde abſque ullo ſacrificio & ſuperſtitione damnabili exhiberi Populorum voluptates, ſecundum veterem conſuetudinem, ac miniſtrari etiam feſta convivia, quando exigunt publica vota, decernimus. Neither ought we to aboliſh our feſtivals in memory of our Saviours Nativity, Reſurrection and of Pentecoſt, becauſe they are *veſtigia legis antiquæ Moſaicæ*, and ſeem to be borrowed from the Moſaical Rites and Ceremonies. The verſes and ſayings of the Heathen Poets dedicated to the Muſes, and to their gods, not onely holy men, but alſo the Apoſtles uſed, not ſo that our faith, ſaith the Apoſtle, ſhould ſtand in the wiſedom of men, but in the power of God. The uſe of humane learning is not to be contemned, by thoſe who would be reputed learned in Divinity: *qui liberales illas artes imbiberunt, earum ſubſidio adjuti, longè altiùs provehuntur ad introſpicienda divinæ ſapientiæ arcana.** We ought to take heed of thoſe who under colour of Incorformity with the Church of Rome, and of their deſire of the utter extirpation of all reliques of Popery, ſeek to ſet diſſenſion in the Church, and to root up ſome of the moſt effectual means which beareth up the ſtate of Religion and the pillars thereof, and ſo make way to prophanation, and to Atheiſme, to enter and build upon the ruines of the Church. Our Rites and Ceremonies by law eſtabliſhed in the Church of *England*, were not ſuch as did peculiarly belong to this or that Sect, but were the antient Rites and ceremonies of the Church of Chriſt, and we have ſtill the ſame reaſon for the uſe of them, and the ſame intereſt in them that our fore-fathers had. That our

1 Corinth. 2.

* *Calvin. Inſtit. lib. 1. c. 5. n. 2. Ad intelligentiam ſacrarum Scripturarum ſeculatium peritia & liberalium Artium eſt neceſſaria. Diſtinctio. 37. Quicquid de ordine temporum tranſactorum indicat hiſtoria gentium plurimum nos adjuvat ad ſanctos libros intelligendos: & quæcunque de locorum ſitu, naturaque animalium, lignorum, herbarum, aliorumve corporum ſcripta ſunt; eandemque cognitionem valere ad ænigmata ſcripturarum ſolvenda docuimus. Auguſt. de Doctrina Chriſtiana lib. 2. Julianus Apoſtata interdixit Chriſtianis uſu Poetica Rhetoricéſque ac Philoſophicarum artium, nam propriis, inquit, ut in proverbio eſt, pennis configimur, ex noſtris enim libris arma capiunt quibus in bello adverſus nos utantur. Theodoreti Eccleſ. hiſt. l. 4. c. 8. An ipſe non eſt Eccleſiam perſecutus qui Chriſtianos liberales artes docere, & diſcere vetuit? Auguſt. lib. 18. c. 52. de Civit. Dei. Licet à cruore abſtinuit, & non Chriſtianorum corpora occidere, ſed ex eorum animis Chriſtum revellere miris artibus techniſque attentabat, quod eſt genus perſequendi omnium efficaciſſimum & perniciоſiſſimum. Ita effectum eſt ut plures hac calamitate abceſſerint ab Eccleſia, quam ulla alia ſuperiore. Lud. Vives.*

Rites

Rites and Ceremonies, which we have common with the Church of *Rome*, are ſcandalous in their nature and inſtitution, they cannot make appear, neither do they endeavour it more then by their general clamour, which implyeth nothing. That ſome Rites and Ceremonies we retain which have been polluted, yea, and ſome peradventure inſtituted at firſt for and unto that thing which was evil, although they can prove, yet in tract of time, and by prudent qualifications applyed, that pollution and impiety may be worn or wrought out, and a good uſe may be found without offence. And although divers Conſtitutions and Ordinances in uſe in our Church were made at firſt under the Papal authority, yet they being ſuch as were not repugnant to the Word of God, nor the Laws and Statutes of this Realm; and ſome others of thoſe Canons and Conſtitutions having been purged from ſuperſtition, they appear full of ſincerity and equity, and ſo were indenized and made Engliſh by our Church and States in Parliament; and are now in that regard no more to be abandoned, then Wheat, becauſe it is ſaid to be invented by the goddeſs Ceres, or many excellent laws of the Romans ſet out at firſt by Painims, and by cruel perſecutors of the Chriſtian faith, and are ſince made of excellent uſe over all Chriſtendome. * But let the Lawgiver or Magiſtrate be never ſo careful to ſatisfie erroneous or tender conſciences, he ſhall never cut out his work to fit every mans conſcience or humour: yet when as things injoyned by lawful authority, are in themſelves indifferent, and without juſt exception, or that the matter hangeth even, or doubtful, the weight of Authority muſt turn the ſcale between the Magiſtrate, and the man of a weak conſcience, leſt the Magiſtrate by neglecting his duty bring a ſcorn upon his authority, and ſuffer a ſcandal to be given unto all others. For although the tender conſcience hath caſt judgement on the thing as ſimply unlawful, and juſt cauſe may be for a time to give him reſpite to rectifie his conſcience, yet ſtill doth his tender conſcience draw him upon the rock of diſobedience and contempt of Authority, and giving ill example and ſcandal, from all which

* *Philoſophi & maximi Platonici ſi qua fortè vera & fidei noſtræ accommoda dixerunt, non ſolùm formidanda non ſunt, ſed ab iis etiam tanquam injuſtis poſſeſſoribus in uſum noſtrum vendicanda. Auguſt. de Doctrina Chriſtiana, lib. 2. De bono & neceſſario uſu doctrinæ & aliarum rerum Paganorum & Gentilium. Socrates Eccl. hiſt. lib. 3. c. 14.*

the following of his tender conſcience cannot excuſe him, eſpecially if he be in an errour, neither any other pretence, if he may find the means to rectifie his conſcience, for he is not then led by invincible ignorance, which, as the Schoolmen ſay, is, *puræ negationis*, but rather by a ſupine negligence, or an affected ignorance, which is termed *pravæ diſpoſitionis*. *Through ignorance*, ſaith the Apoſtle, *which is in them, becauſe of the blindneſs of their hearts, having their underſtanding darkned.* Eph. 4. 18.

Cap. 44. Decret al. de ſentent. excom. *Diſtinguendum eſt an pro certo ſciat homo, an conſcientia pulſat animum ex credulitate probabili & diſcreta; an ex credulitate levi & temeraria, ne contra legem, vel contra judicium conſcientiæ committat offenſam.*

Alberic. Gentil. & alii. *Inſipida eſt conſcientia, quæ rationis & ſcientiæ ſalem non habet: non debet quis ſibi de eo facere conſcientiam, quod non poteſt explicare ſecundum rationem veri & conſtantis judicii: nec conſcientia dubia, eſt conſcientia; aliàs cum dubitare de omnibus poſſit, etiam de indubitatis, ac etiam ſine ratione, quid eſt quod dici dubium non poſſit?* Into theſe perplexities do men fall and often draw others by foſtering and cheriſhing of an errour, whereby they ſeem to take as faſt hold of the errour, as the errour doth of them, and ſo they fall into the number of thoſe, who do erre in their hearts, and not onely in their heads. If our Chriſtian liberty, which ought to be ſubordinate to charity, we ought to moderate and reſtrain, rather then offend the weak conſciences of others; we ought certainly to indure, in things of their own nature indifferent, the reſtraint of our liberty by Lawful authority (unto which we muſt be obedient for conſcience ſake, ſaith the Apoſtle) rather then to offend the Law, and violate the Peace of the Church: *Qui contra pacem Eccleſiæ ſunt, ſi dignitatem aut cingulum militare habeant, nudentur eis; ſi ſint privati nobiles, ſuarum ſubſtantiarum proſcriptionem patiantur: ſi ſint ignobiles, non ſolum in corpore verberentur, ſed exilio perpetuo caſtigentur.*

Cauſa 24. quæſt. 1. c. 32. If we look for a Church where there are no ſcandals given to mens conſciences, neither any inperfections and defects, we muſt go out of the world; for we ſhall find none, but only the triumphant Church in heaven. There may be a true Church where there are imperfections, ſo as the eſſential marks and properties thereof are not wanting. If amongſt the Corinthians the Church did remain, in reſpect of the Miniſtery

of

of the word and Sacraments, notwithſtanding their Sects and corruptions, and which was worſt, many of them had even in deriſion the doctrine of the Reſurrection. If alſo amongſt the *Galatians* great backſliders and full of corruptions the Apoſtle acknowledged a Church, wherein ſalvation might be had, he would certainly have condemned ſuch men as our new Profeſſors, who for much ſlighter cauſes make a ſeparation, and break the peace of the Church upon diſlike of all Ceremonies and diſcipline, that is not of their own invention. The Apoſtles delivered not expreſs and particular order for all Church Government, but left moſt of it to be accommodated to the times and occaſions, as might beſt ſerve for edification and the Service of God. And ſo touching Ordinances and cuſtomes in the Church, which men ought to obſerve, and thoſe who are contentious, and given to innovations, the Apoſtle taketh them off with this ſaying, *We have no ſuch cuſtomes, neither the Churches of God. In his rebus de quibus nihil certi ſtatuit divina Scriptura, mos populi Dei, & inſtituta majorum pro lege tenenda ſunt: & ſicut prævaricatores divinarum legum, ita contemptores Eccleſiaſticarum conſuetudinum coercendi ſunt.* But theſe innovators are not ruled by any cuſtomes and Lawes, but ſuch as pleaſe them. They ſtill urge without bringing any proof, that nothing ſhould be eſtabliſhed in the Church, which is not expreſly commanded in the Word of God; and that their Presbyterian diſcipline is onely of divine right: wherein they deal unjuſtly in requiring expreſs Texts of Scripture from us, which is not needfull, whereas they in their own cauſe obtrude upon us peremptorily things they call neceſſary, for which they cannot bring any poſitive, expreſs or probable warrant out of Gods word, or from thence to be probably deduced and inferred. They catch at every Text of Scripture as their fancy leadeth them, according to the old and uſual courſe of Hereticks and Schiſmaticks, to prove their own, and deſtroy the old Church Government, without any conſideration of the Expoſitions of the Antient Fathers, or Modern Divines, or any regard how wilfully they pervert and abuſe the

1 Corin. 15. Galat. 1. & 6. 4. 11.

Ut D. *Auguſt.* Decret. Gratian. Diſtinct. 11. c. 7. *Qui etiam dat hanc regulam; ut quæ conſuetudines non ſunt contra fidem, neque contra bonos mores, et habent aliquid ad exhortationem vitæ melioris, ubicunque inſtitui videmus, non ſolùm non improbemus, ſed etiam laudando & imitando ſectemur:* Epiſtola ejus ad *Januarium.*

Word of God, as those who have largely and learnedly handled these points, have made appear. *

* S. Hierome sheweth us such men in his time, *qui quicquid dixerint, hoc legem Dei putant; nec scire dignantur quid Prophetæ, quid Apostoli senserint; sed ad sensum suum incongrua aptant testimonia, quasi grande sit & non vitiosissimum docendi genus depravare sententias, & ad voluntatem suam Scripturam trahere repugnantem. Epist. ad Paulinum.* The unlearned and unstable wrest the Scriptures unto their own destruction. 2 Pet. 3. 16.

But seeing they deal thus with the Scripture, it cannot be expected they should regard humane Laws, neither the power given by God to Kings and to his Church, and to make such Laws as carry with them both a directive and a coercive power. Such Laws and Constitutions, I mean, as are in no respect repugnant to Gods word, but are deduced from the general rules thereof, and grounded upon the varranty left by our Saviour and his Apostles as guides and limits for the Church in all ages. *Humane lawes are measures*, saith Aquinas, *in respect of men whose actions they direct and govern*, and these measures have their higher rules by which they are to be measured, which are the laws of God and nature. Those Laws therefore have the essential parts and properties of the best positive Lawes, which the Lawes of God do approve, and are such as are extracted from the light and law of Nature, and the common and demonstrable precepts thereof, most agreeable to common equity, and are most necessary for the preservation of the peace and welfare of the Church and Common-wealth. It is therefore a false and dangerous doctrine of theirs, that it is not in the power of the Church or State to restrain and bar men by Lawes from their liberty, which God hath granted unto them, no more then it is to take away the yoak which God hath laid upon them, and to countermand that which he hath expresly injoyned. They may find a difference between the liberty granted us by God and nature, which is restrainable, and the eternal precepts of God which are immutable. By this doctrine the power of government is so restrained, and so weakened, as that the frame and pillars thereof are shaken, and the difference almost taken away between the things of greatest weight, precisely defined and injoyned by the Word of God to be observed alwayes (as are those which the Schoolmen

men call his negative precepts) and those other things of less moment, which have little or nothing of precise and perpetual commandment, but more of liberty granted unto men by God and nature, and yet not exempted from the power of the Church, or Magistrate, to alter or restrain according to special occasions and variations of times.

In this miserable age wherein we live, we are to deal with men, such as the antient times never produced; men who rest not upon the disobedience of Princes and contempt of Laws Divine and humane, but teach and practise the introducing of new orders and discipline in the Church and State by fire and sword, and do destroy those men and their estates who joyn not with them: *Men who gather themselves together against the soul of the righteous, and condemn the innocent blood.* Such men are not to be found, save in the time of Antichrist, mentioned by the Prophet, who *shall wear out the Saints of the most High, and think to change times and laws.* The doctrine of the Gospel, much less the Discipline of the Church, ought not by such means in any case to be brought in, or established: *Apud Christianam disciplinam magis occidi licuerit, quàm occidere: non est religionis cogere religionem:* Religion saith Saint *Austin* is planted and preserved by instructing more then by commanding; by admonishing more then by threatning. *Not that we*, saith Saint Paul, *have dominion over your faith. Præcipit sancta Synodus nemini ad credendum vim inferri, cui enim vult, Deus miseretur, & quem vult, indurat.* The sword availeth little with the souls of men, unless to destroy them together with their bodies, and to make men desperate, or dissemblers in Religion, and when they find opportunity, to fall into rebellion, as there are many examples. The old just and necessary Edicts made by the best Christian Emperours against Hereticks, and those who were of a contrary religion to that which was publickly received and established, were but Civil and Political Lawes for the tranquillity of the State and People, *quæ pacis perturbatorum pervicaciâ exasperanda sunt, parentium et obtemperantium bono temperanda et moderanda sunt:* and this K. *James* declared, when he set forth the oath of Allegeance. Those Imperial edicts did not punish men for their diversity of religion, neither gave them toleration: their scope and end

Psalm 94. 21.

Daniel 7.25.

Tertul.
Bernard.

2 Corin. 1 24.
Cap de Judæis Distinct. 45.

Thuan Epist. in prin. ipsius Hist.

was

was not to inforce the conſcience, but to preſerve the Peace. *Aliæ ſunt Leges Cæſarum, aliæ ſunt Leges Chriſti: aliud Papinianus, aliud Paulus noſter docet.* And yet Saint *Auſtin* doth allow of the puniſhment of ſome hereticks by pecuniary mulcts or baniſhment, as being not repugnant to Chriſtian lenity, and ſheweth that many of the *Donatiſts* were by the terror of Laws and edicts brought to the Catholick Faith, and to unity in the worſhip and ſervice of God. *Aliqui melius procul dubio coercentur gladio, illius videlicèt, qui non ſine cauſa gladium portat. Rom: cap. 13. quàm ut in ſuum errorem multos trajicere permittantur.* Some diſcreet coercion may oftentimes neceſſarily be uſed towards thoſe who contemn or neglect the ſervice of God, and the preaching of his word, the means of ſalvation, The parable of the marriage feaſt ſaith, *compel them to come in, that my houſe may be filled. Melius eſt cum ſeveritate diligere, quàm cum lenitate decipere. Parcere alienis peccatis quæ dedocere & objurgare debemus, hoc eſt, propter quadam cupiditatis vincula, non propter Charitatis officia.* But in the antient times of Chriſtianity, ſuch means were not uſed, as might make Hereticks & Schiſmaticks more obſtinate, then docible, through the prepoſterous proceedings of the Magiſtrates and Miniſters of juſtice in the execution of penal Lawes, uſed rather as ſnares for gaining of money, and pecuniary mulcts impoſed, rather as prices ſet upon offences, then as puniſhments for the reformation of manners. Such Magiſtrates adminiſtring Juſtice in ſuch manner are obeyed *non tanquam Rectores morum, ſed tanquam dominatores rerum, eoſque non ſincerit èr honorant, ſed nequit èr & ſervilit èr timent.* The Roman Law herein giveth a good direction, *ne in iis quæ ad correctionem morum ſpectant, & inducta ſunt, fiſci rationem habere videamur: & Lex Julia de caducis, ultimum locum dat fiſco; nam quod communiter omnibus prodeſt, hoc privatæ noſtræ utilitati præferendum eſſe.* *Plinie* in his Panegyrick ſaith unto Trajan the Emperour very elegantly, *Præcipua tua gloria eſt, quod ſæpius vincitur fiſcus, cujus cauſa nunquam mala eſt niſi ſub bono Principe: ſed nunquam Principibus defuerunt qui fronte gravi & triſti ſupercilio utilitatibus fiſci contumaciter adeſſent.* For this cauſe of religion and planting the Goſpel, the beſt Divines do not allow the Spaniards plea, for ſhedding the blood of the Indians: *Inferre bella*

D. Hieronym. Epiſt. 48. & 50.

D. Bernard. ſer. 66. ſuper Cant.

Luke 14.

Auguſtin.

Auguſt. de Civit. Dei lib. 2. c. 20.

L. 1. Cod. de ſecund nup. Tit. Cod. de Caduc. tol.

bella ac Populos ſibi non moleſtos cupiditate conterrere ac ſubdere, quid aliud eſt, quam grande latrocinium? They ſhould not ſo much have uſed the ſword againſt the refractory Indians, but rather the rod, the ſpur and the bridle of good diſcipline and example to bring them to Chriſt; for they had no dominion over them, neither any offence formerly given by them; dominion and propriety is not founded in and by religion, but by a juſt, natural or civil right acquired: *Dominia quæ ſunt juris gentium, non tollit fides Chriſtiana.* Infidelity doth not forfeit inheritance and propriety; and thus the Schoolmen ſay, *diſtinctio fidelium & infidelium in ſe conſiderata non tollit dominium, & prælationem infidelium ſuper fideles.* And this did the antient Chriſtians acknowledge by their great loyalty towards their Soveraign Princes, heathen Emperours and cruel perſecutors. But our men indued with their new lights, have found that the ungodly have no right to the Creatures, but are uſurpers, and have made a forfeiture of their propriety, of which they, the Saints, may take the benefit, and be the ſole Judges. The antient Chriſtians were forbidden by the Imperial Law, as alſo by the Laws of other Chriſtian nations under a great penalty to meddle with the goods of Jews or Pagans living peaceably. For the goods of the Jews, although enemies to the Chriſtian religion, cannot for the cauſe of religion come by eſcheat unto Chriſtian Princes under whom they live: for delinquency they have often forfeited their goods, and been expelled, and ſometimes all of them for the faults of a few; and and thus have they been dealt withall, *Regia manu, & bono potius exemplo quam conceſſo jure,* or rather out of reaſon of State, which will not want ſpecious pretences. It cannot paſs with a clear admittance, amongſt all the Doctors of the Roman Church, that the Pope hath power over Infidel Princes to raiſe Armies againſt them, although they do hinder the preaching and propagation of the Goſpel, univerſally authorized by theſe words, *Ite, prædicate Evangelium omni creaturæ,* ſeeing he hath not (for ought can be made appear) temporal authority annexed to his ſpiritual, either directly or indirectly, *in ordine ad ſpiritualia,* to depoſe Chriſtian Princes, or to raiſe war againſt them, for the advancement of Chriſts Kingdome; but as for thoſe who are not Chriſtians, the Apoſtle ſaith, *What*

Auguſt de Civit. Dei. lib. 4. cap 6.

Aquinas.

L. 6. Cod. de Paganis.

have

Bezero. *have we to do with thoſe who are without?* It is truly ſaid, that peace, a meſſenger whereof, an Angel hath been choſen to be, is ſcarce ever eſtabliſhed by the Sword; and the Goſpel, the bleſſed peace, cannot be publiſhed by the ſound of the Cannon; neither the ſacred Word be conveyed unto us by the impious hands of Soldiers; neither tranquillity be brought to the perſons and conſciences of men, by that which bringeth ruine unto Nations. The Jewes were guilty of the greateſt incredulity, ingratitude and crime, and yet the Gentiles were admo-

Rom. 11. niſhed by Saint Paul *not to ſhew any cruelty towards them, or inſult over them, but to ſeek to provoke them to an holy jealouſie*, and ſo to gain them unto Chriſt. When Nathan reproved David, he ſaid, *hereby thou giveſt an occaſion to the adverſaries to blaſpheme the name of God.* The primitive Chriſtians rather choſe to indure the moſt cruel perſecutions, then to diſturb the peace of the Roman Empire, and break the band of their Allegiance unto the heathen Emperours; and this Saint Paul taught them who wrote his Epiſtle unto Chriſtians living under

Rom. 13. Nero, and yet he telleth them, that *the Powers are of God*, and *he that reſiſteth the Powers, reſiſteth the ordinance of God and*

D. Auguſt. de Civit. Dei lib. 22. cap. 2. *ſhall receive damnation. Civitas Dei quamvis haberet tam magnorum agmina Populorum, tamen adverſus impios Perſecutores ſuos, pro temporali ſalute ſua non pugnavit; in iis non erat pro ſalute pugnare, ſed ſalutem pro ſervatore mundi contemnere;*

Cyprianus. Grot. de jure belli lib. 1. c. 4. n. 7. *Quamvis nimius & copioſus noſter Populus, non tamen adverſus violentiam ſe ulciſcitur, ſed patitur.* But when this is preſſed againſt our new Patrons of Rebellion, they contradict Saint *Auſtin* and the Fathers with a lye, and ſay, thoſe antient Chriſtians ſuffered through their want of power to make reſiſtance; whereby they do, as much as in them lyeth, deprive them of all the glory of Martyrdome, and do injury unto their moſt bleſſed cauſe, and the glory of God in his Saints ſufferings. And yet as nature doth draw us to yield to the unreſiſtable power of a ſevere Conquerour, *vox eſt quodamodo naturæ, ut ſubjugari*

Auguſtin. *mallent hoſtibus victoribus, quam bellicâ omniſariâ vaſtatione deleri*; ſo doth the law of nature give warrant for our reſiſtance, *cum moderatione inculpatæ tutelæ*, as doth the law of God give us permiſſion for our flight in time of perſecution, when we do not thereby deſert our vocation, nor betray, nor prejudice a juſt cauſe.

CHAP.

Chap. IV.

Of the changes in Religion in England; *And by* Luther; *And the toleration of divers Religions.*

THe Profeſſors of the Proteſtant Religion, were at firſt, and have been ſince taxed, as ſeditious and deſpiſers of Government, and advancers of Popular licentiouſneſs, and that their Reformation in Religion proceeded from faction, or turned into faction and tumults, notwithſtanding all their publick Confeſſions of their Faith, and declarations of their Doctrine ſet forth in deteſtation thereof, wherein they did fully profeſs their obedience unto the Civil Magiſtrate. But it hath been very antient and uſual to lay that general charge of raiſing Sedition, when the malice hath been greater then the matter, and no other ſpecial crime could be found. So Saint *Paul* was accuſed for being a *peſtilent fellow and a raiſer of ſedition*. *Tertullian* ſaith, Chriſtians in his time were called *hoſtes publici*, enemies of all Common-wealths; and *Suetonius* doth moſt impiouſly ſay, *Judæos impulſore Chriſto aſſidùo tumultuantes*: and ſo Tacitus ſaith, that Nero, *Reos quæſitiſſimis pœnis affecit, quos per flagitia inviſos vulgus Chriſtianos appellabat; unde quamquam adverſus fontes, & noviſſima exempla meritos, miſeratio oriebatur, tanquam non utilitate publica, ſed in ſævitiam unius abſumerentur*; thus happeneth to all a like meaſure, who lye under the publick hatred. It is true that the change of Religion in Germany and in other parts of Chriſtendome was driven on in a tumultuary courſe, and was not wrought in ſuch a calm as it was in England, where theſe changes went formerly in an orderly and quiet paſſage, under the conduct of a Royal power, and a prudent Council of State. Religion changed as it were by degrees and inſenſibly; all things ſeeming to remain in the ſame courſe and ſtate as before: and as one obſerved, it was in thoſe times ſo carried with us, *ut Catholicam religionem ſine ſenſu Plebs exueret, cultu in ſpecie eodem manente*. The Parliaments in England in thoſe times gave much counte-

Eccleſiaſtical hiſtory.

In vita Claudii l. 15. hiſt.

nance and authority to those alterations with the People. The Kings and Queens would hardly have effected it, *Regiâ manu*, notwithstanding their power, and the love they had of their People. The Parliaments were wrought not onely to ratifie, but to be petitioners for those changes in Religion.

Ribadinera del Schisma d' Ingla terra. A stranger writeth that when Queen *Elizabeth* came to the Crown, religion was not altered with violence, and bloud, as in France, Scotland, and the Low-countryes, but changed and established by Laws, by Royal mandates, and with Parliamentary concurrence, which saith he, hath been a subtil and powerfull invention armed with the authority of Prince and Kingdome, for the sure rooting and settlement of sects and heresies.

Lord Chanc. S. Albans of the union between England and Scotland. These quiet alterations formerly were even marvellous in our eyes, and as it were a felicity peculiar unto our nation, as was said of that change upon the death of Queen *Elizabeth* and the coming in of King *James*, who acknowledging to the Lords of England their great loyalty in his coming to the Crown, said, that it was a success above the course of nature, to have so great a change with so great a quiet. In Germany, France, Scotland, and other parts of Europe, many of the Contrivers and Actors in the reformation of religion, did neither *sapere ad sobrietatem* neither *agere cum sobrietate*, especially when they were strongly opposed, and perceived divers designs for their destruction: for some of them had a mixture in their heads of the Anabaptistical leaven, and were infected with that fury. Insomuch as *Bucer* a man of great learning and moderation would often say unto them, that in their great heat of zeal in rectifying the service of God, and reforming the Church, good order and discipline failing amongst them, the tumultuous and seditious persons were not chastised, neither any order and decency in the service of God observed; and therefore their laudable endeavours would not long last, neither happily succeed: for the discreet and moderate men amongst them, and those in greatest authority were oftentimes compelled to suffer many enormities and outragious actions, lest by enforcing correction and discipline, they should lose the assistance and affection of

Tacitus. their own party. The Captains durst not take the boldness to punish, as the souldiers did to offend: voluntary obedience maketh the command and power weak, as is that power which

cannot

cannot ſubſiſt by its own ſtrength. Before *Luther* was in his grave, and when his reformation was but in the infancy, ſome who ſeemed, or were reputed his diſciples, brake out of their pretended integrity through an over zealous and irregular deſire of reformation into abominable opinions and furies, tending to the deſtruction of all Goverment in Church and Common-wealth. And *Luthers* doctrine alſo meeting with divers of weak and turbulent Spirits, over greedy of reformation, and abounding with wild zeal, or Spiritual pride, all the pretious liquor they received turned into gall and vinegar, and from theſe did ſeeds ſoon ſpring up, which raiſed a ſwarm of * Anabaptiſts and other fanatick Sectaries, which made themſelves a new Goſpel of Licentiouſneſs and Rebellion, and ſcorned *Luther* and his doctrine at laſt. And although after they had done much miſchief they were ſuppreſſed, yet they ſcattered ſuch ſeeds as the fruits thereof do now exceedingly afflict the Church, and cauſe great diſturbance, which to pious men is the greateſt perſecution, for this afflicteth their hearts and ſouls, *qui patiuntur hanc perſecutionem non in corporibus, ſed in cordibus, & eſt perſecutio intrinſeca & extrinſeca.* By this we may ſee what hath moved Princes and Common-wealths, not to tolerate divers religions, or any thing different from the religion eſtabliſhed. *Mahometanam ſectam latè ſparſiſſe ſe, dum religionis noſtræ capita inter ſe diſſident, & ſic factum eſt ut ad Mahometanos partim vi, partim ſponte deficerent populi: hinc amiſſam Eccleſiam Antiochenam, Alexandrinam, Hieroſolymitanam. Multi volentes eſſe Chriſtiani propter eorum diſſentiones, hæſitare coguntur; & multi Maledici in his inveniunt materiam blaſphemandi Chriſtianum nomen, quia tales Chriſtiani appellantur:* The Devil, ſaith Saint *Auſtin* doth ſtir up Hereticks, who under the Chriſtian name do reſiſt the Chriſtian doctrine. The Romans had ever a circumſpect eye, and carried a ſevere hand on thoſe *qui nova ſacra & peregrinos ritus introducebant*; and they ordained, *ne qui Dii, niſi Romani Dii, neque ullo modo quàm patrio colerentur.** For as *Livie* ſaith, the wiſeſt and moſt skilful in all divine and humane lawes, held nothing ſo forcible to overthrow Religion, as

* Theſe Anabaptiſts then ſtarted up, and declared that they had ſpeech with God, who commanded them to deſtroy all the wicked and to raiſe a new world in which the godly onely ſhould live and reign. *Sleidans Comment. lib.* 3. *Fox* Acts and Monuments.

Auguſt. de Civit. Dei. l. 18. *c.* 51.

Cauſ. 7. *quæſt.* 1. *cap.* 48.

Platina.

Auguſt. de Civ. Dei lib. 18. *cap.* 51.

Valer. Max.

* By the Divine law, he that ſacrificeth to any

god, saving to the Lord onely, shall be destroyed. Exod. 22.

The Prophet or dreamer shall be put to death, who doth intice to the service of other gods. Deut. 13 5. and the inhabitants and the city shall be destroyed that serve other gods. Deut. 13. 15, 16.

*L. 29. Cod. de Episcop. & Clericis. L. 4. Cod. de Summa Trinitate. L. 8. §. 5. Cod. de Hæreticis.

as when the Divine service is celebrated after some strange and forreign course, and not according to the antient custome of their Countrey. Which consideration moved *Numa Pompilius* in the first foundation of their Common-wealth to provide, *ne quid juris divini, negligendo patrios ritus, peregrinosque adsciscendo, turbaretur. Constantine* made a Law, that all Christians should use the same Temples, and not have different assemblies. And other Christian Emperours did very strictly command,* *ne de Religione vel Doctrina disputent, vel conciliabulis præsint, vel turba concitata simpliciorum animos seducant. Nemo cujuscunque conditionis de fide Christianâ publicè turbis coadunatis tractare conetur; ex hoc tumultus & perfidiæ occasionem requirens; ne facultas tribuatur publice vel privatim convocandi cœtus, & de hæretico errore disputandi, & perversitatem facinorosi dogmatis adserendi: nemo hujusmodi libros habere, & sacrilega scriptorum monumenta audeat servare. Quod siquis de his criminibus fuerit deprehensus perpetua deportatione damnetur.* Variety in opinions of religion causeth several conventicles, evermore dangerous in a Common-wealth, as we shall hear hereafter; and from variety in religions they fall into factions, and from all religion into Atheisme. *Ex schismate hæresin nasci, ex hæresi plerumque Apostasin.* Therefore *Julian* the Apostate called from banishment the Donatists and other Hereticks, and permitted them and all others who professed the Christian religion to maintain what opinions they would one against an other, that by their dissentions the Christian religion might be weakned, and Paganisme the better established. For it fareth with the vulgar as with the Epicurean sect of Philosophers, grosse witted and sensual men, who when they did see such great and continual strife concerning the Diety, took the shorter way by denying it altogether, then to feigne as others did many uncertain gods, and so fall into inextricable labyrinths and contentions with other Philosophers, which could never have any certain determination and end. The Jews are permitted the free exercise of their religion in some Christian countries, which is denyed to those they do account Hereticks, and Schismaticks, and the reason is given, because they pollute and violate the Christian religion which they professe, and disturb the Peace of the Church and Com-

mon-

mon-wealth where they live: *Hæreticorum, qui profitentes ipſum Evangelium illud corrumpunt, infidelitas eſt omnium graviſſima. De his qui de illa gente Chriſtiano nomini contradixiſſe ſciuntur dictum a ſponſa filii matris mei pugnaverunt contra me: Inimici ejus ſunt ipſius domeſtici: Hæc inteſtina & inſanabilis plaga eſt Eccleſiæ, pax à paganis, pax ab hæreticis, ſed non profecto à filiis.* Therefore to conclude this of religion, and the diſturbance of the Peace of the Church: the beſt Philoſophers and Lawgivers did ever repute unity in religion the chiefeſt Pillar that upholdeth humane Society, and obedience to ſupream authority, which cannot ſtand after religion is fallen *

Aquin. Alciat. & alii.

D. Bernard. in Cant.

* *Religionem cum Imperio periclitari. Thuan. lib. 116 Hiſtor. Religioni, niſi ſalvâ Republicâ conſuli non poſſe. Thuan. 136. Hiſtor.*

Chap. V.

Of the uſe of Parliaments; Of the danger that cometh by the abuſe of Parliaments; and the Factions that therein ariſe.

WE paſs now from the Church to the Parliament, and to thoſe abuſes and corruptions, which both deſtroy the uſe and the rights of Parliaments, and the power and Majeſty of Monarchy, two pillars of kingdomes and Common-wealths. As God hath ſet Kings in the higheſt place and office, and intruſted them with the greateſt authority on earth, and will therefore take the ſtricteſt account of them, ſo cannot they eſcape his heavieſt judgements, who are choſen to counſel him in his greateſt affairs, and do not onely fail in their duty, but do intrude themſelves into his office, and hinder him in the obſervation of his oath, and in performance of his duty to God and his people. As the eſtates in Parliament ought to be Conſervators of the Rights and Liberties of the People, ſo ought they to be of their own bounds and limits, in which if they exceed, they do alſo give an ill example to all other inferiour Courts of Juſtice, (ſubject to their care and regulation), to the hindrance of Juſtice and diſtribution of common right which

which turneth to the disturbance of the peace of the Kingdome, and raising confusion in jurisdictions. *Si iniquum est transgredi limitem agrorum, quantò iniquius est transgredi limitem morum?* As it is a great crime, by the laws Divine and Humane, to remove the ancient bounds and land-marks; so is it no less, to remove the Law bounds and limits of Jurisdictions. *The Princes of Judah are like those who remove the bounds, upon whom I will poure my wrath,* saith the Lord, *like water.* Such incroachments and usurpations, proceeding from those who should be conservators and reformers, work the speediest confusion in all Societies: and it sheweth Gods great indignation, when that which should have been for our welfare, becometh a snare.* Therefore Parliaments when they erre thus, they erre most perniciously, either in being insnared and driven by an over-ruling power, or by an active faction, or by violent perturbations raigning in them, and then do they not deserve the name of Parliaments; for as *Cicero* saith, *Rempublicam dici non posse, optimatum factionem, Populi conspirationem & factionem: tunc esse Rempublicam, id est, rem Populi, cùm benè & justè geritur; non populum esse omnem cœtum multitudinis, sed cœtus juris consensu & utilitatis communione sociatus. Ubi est tyrannis vel factio, vel dominatus alicujus turbæ, non tam vitiosa est Respublica, sed nulla omnino: ubi lex non est, ibi nec Populus est, & si Populus non est, nec Respublica; nam Respublica est res Populi.* And therefore Saint *Austin* concluded, that the Roman state when it was subverted by Tyranny, or by the peoples factions and iniquity, was not a people, in not being *juris consensu & utilitatis communione sociatus*; neither could it be called properly an evil and corrupt Common-wealth; but rather no Common-wealth, when the State was ruined by factions, violence and injustice. *David* said under *Sauls* government, that *the earth and all the inhabitants thereof were dissolved.* And thus they who are not lawfully chosen and assembled, or do act contrary to their calling and duty, cannot challenge any priviledge proper to that office and calling. The Roman Tribuneship was reputed sacred, being established

Augustin.

Hosea 5.10.

* It was said in relation to the Roman Senators, fallen from their antient glory, *aliorum vitia intrà ipsos residunt, nostra latè vagantur; ut in corporibus, sic in Imperio gravissimus est morbus, qui a capite diffunditur. Plinii Epistolarum lib. 4.*

Cujacius.

De Civitat. Dei.

ſtabliſhed for the ſafety and benefit of the people: But if the Tribunes do that which is contrary to their office, or ceaſe from doing thoſe things, for which their authority was given them, their authority and priviledges leave them. *Privilegium licet non amittitur per non uſum, amittitur tamen per uſum contrarium, & per delictum occaſione privilegii commiſſum, & per delictum ſeu abuſum directè privilegii fini repugnans & fundamentum ejus deſtruens.* And as there are military priviledges, and military offences and puniſhments, ſo are there Parliamentary priviledges, and Parliamentary offences, which have had and ought to have condigne puniſhments, agreeable to Juſtice and Politick government, and preſidents in all times and Kingdomes.* Although in all Parliaments, Aſſemblies and Councels, the offences of the particular members ought to be diſtinguiſhed from thoſe of the whole and intire body, which may alſo be involved in their crimes, by connivance at them, or by neglect in puniſhing or preventing that which lay in their power. *Læditur perſonali ſcelere ac particulari, cauſa cunctorum: in Populo Iſraelitico ſæpiſſimè unius facinus peſtem fuiſſe multorum. Poteſtas quæ inhibere ſcelus poteſt, quaſi probat dedebere fieri, ſi ſciens patitur perpetrari.* But more properly and directly the whole body offendeth in omitting their Principal duty, and in committing acts contrary thereunto, *una voluntate, præſidente deliberatione, communicato conſilio.* And as in the Roman Hiſtory it doth often occur, *an privato an publico conſilio. Si defecerit Populus, publico conſilio, dolo malo, ſive non, quia delicta vulgi à publica cauſa ſeparari.* A People, a Colledge, a Body politick may offend, and are puniſhable, and as in the Law, *Populus, vel Curia, vel Collegium hoc edicto tenentur.* Sometimes the offence ſhall be puniſhed in their natural Perſon: ſometimes in the body Politick: ſometimes in both. And much diſpute there is amongſt the Lawyers, *quando univerſitas punienda ſit in ſuo univerſali, quando in particulari, quando & quomodo ex delicto Col-*

Plutarch in the life of Gracch.

Suarez de legib. libro 8. & alii.

* They that ſay a whole Society or Colledge cannot be puniſhed, as it cannot be excommunicated, do agree, that not onely the offenders may, and chiefly thoſe who are the cauſe, but all thoſe alſo who are members, and did not reſiſt the evil: *niſi pertinaciter reſtiterunt, atque aliis contradixerunt. Gloſs ad c. 7. cauſa 10. quæſt 2. & ad Decretal. de Simonia c. 30. quia officium eorum individuum eſt, & periculum commune, univerſi ſunt veluti in corpore unius formæ, & quod ab uno committitur, quandoque totius corporis periculo committitur; Si tales ſint actus ſingulorum per quos detegi poteſt conniventia, ſeu voluntas tacita univerſitatis approbantis delictum.*

Auguſtin.

Livius.

Cicero. L. 9 F. Quod metus.

Collegialiter commisso; quando pœnâ læsa Majestatis puniendæ sit universitas, quando singuli ob delictum universitatis; all which I passe over, although worth consideration. The most agreeable course unto Justice is, to lay the greatest punishment upon the Authors and cheife Actors, *ut unde orta est culpa, ibi pœna consistat.* Upon these the Law imposeth the damage for the most part, and oftentimes they bear the whole punishment, if they can be found, *in eum supplicium exerceri, qui vim facere tentaverit, & alteri parti causam malorum præbuerit.* It was the Command of God unto *Moses* to take the heads of the cheife of the People and to hang them up, who had consented, dissembled and participated in the common impiety. *Causa & origo penes autores, & a quibus contagio. Singulis civibus & civitatibus tumultuantibus, atque adeò (si non rebellibus & contumacibus) sed inconsulto ac temerario motu, vel alieno etiam exemplo, veniam dari.* For the multitude or greater number seldome equally offend in the highest degree; *multitudo vix peccat graviter, sed aut decepta, aut impetu, aut temeritate,* as in the Imperial Law; or by a fatal fury of the time, seising on them as a pestilent contagion; *fatali rabie temporis & pestiferâ contagione,* as *Mendonius* the Spaniard said unto *Scipio*, in excusing his and his peoples rebellion, *Multitudo est causa in quam severitas disciplinæ exercenda non est; sed si volunt defendere peccatum quasi ex authoritate, tunc multitudini parcendum non est.* And therefore we find it agreeable with the practice of the best men, and to the rule given by the most prudent, that the multitude be spared, especially after the offence committed, although not when they are in the act offending, *non parcitur multitudini in delicto committendo, ubi perniciosior est quies & cunctatio quàm temeritas, & nihil festinatione tutius, & magis facto quam consulto opus est.* There may be oftentimes just cause to forbear all punishment of the People, as in the case of *Syracusa*, who being charged with revolting from the Romans, they pleaded for themselves, that their City was undone between the Tyrants of the one side, who held them under the yoke, and the Roman General on the other side; so as they stood in the midst as a prize or reward for the winner, and ought therefore to be rather restored unto their former estate by the Romans then after so miserable servitude and war to endure a new addition of affliction and misery. I have

Livius.

L. 6. Cod. de vi publ.

Numb. 25. 4.

Livius.

P. Fab. Sem. lib. 3. c. 16.

Novel de Procur. Cæsar.

Livius l. 28.

Distinct. 44. c. 1. & distinct. 6. c. 1. de Pœnitentia, cum Glossa.

Bartol. de seditios.

Livius lib. 26.

I have obſerved that there are two peſts and cankers, which in time hath not onely eaten out all that excellent fruit and benefit which Kingdomes have had, and may reap by the right uſe of Parliaments, but have alſo cauſed that inſtitution ſo neceſſary for the Publick good, to prove the bane and ruine thereof. The one is when Kings abſolute in power, and exorbitant in their will, give that rule to Parliaments, as *Xerxes* gave to his Counſellors, to obey, rather then perſwade, and call their Parliaments onely out of ſpecious pretences, for getting of money, or to authoriſe and countenance ſome ſiniſter purpoſe and deſign, uſing ſtrong deluſions, and giving fair hopes of redreſs of grievances, *oſtentata potius quam data, nec niſi brevi manſura remedia.* Some of the Roman Emperours ſhewed Kings this way, and obtained their deſire, the Senate being fearful and tongue-tyed, and were called *aut ad ſummum nefas, aut ad ſummum otium.* * This amongſt many other ill effects, taketh off the affections of the people, and filleth them with jealouſies, and cauſeth them not to give credit and aſſiſtance unto him when they ought. The other Peſt or Canker proceedeth from Parliaments; as when they ſuffer the power and dignity of the Parliament to be abuſed and perverted, by a predominant faction, which ſwayeth all, and cut out all their work in relation to their own deſigns, and the authority of Parliament ſerveth, as do journey-men, to make it up, and acceptable to the people. This is as bad, if not worſe then the contrivance of *Lewis* the eleventh of *France*, uſed alſo ſince by his ſucceſſors, who finding how tedious Parliaments were, in their moſt important affairs requiring moſt expedition: how apt to fall into impertinent diverſions, & into faction, and turbulent licentiouſneſs, under colour of uſing their juſt liberties and promoting the publick good; theſe Kings procured the power and office of the three Eſtates to be tranſferred to certain ſelect delegates taken out of their own body, and ſo ſaved the trouble of the General Aſſembly, and took away almoſt all uſe of

Paul. Æmilius

Plinius.

**Senatui præbebat Tiberius ſimulachra libertatis, ſpecioſa verbis, re inania, quantôque majore libertatis imagine tegebantur, tanto eruptura ad infenſius ſervitium, Tacitus.*

Paul. Æmilius: Thuanus. Bodin de Repub. Ordines pro eâ quam exercent in Comitiis libertate facile diſſenſuros fuiſſe, in quo & majeſtatem ſuam Populis tentandam, aut etiam contemnendam expoſuiſſet Rex, & eorum animos tanto magis irritaſſet, quanto ils invitis peregiſſet: Strada & Bentivoglio de bel. Belgico.

Parliaments, and with it the beſt means the people had, to acquaint their King with their grievances, and obtain redreſs, and to preſerve their juſt rights and liberties. And although Parliaments are called for juſt cauſes, and do ſit in full liberty and freedome, yet doth it often happen as in ſome General Councils called for the extirpation of Hereſies and Schiſmes, and the preſervation of the Church and the peace thereof, that they being not at peace among themſelves before they came, neither bringing with them the love of truth and minds inclinable to peace and moderation; the former evils (for reformation whereof they were called) were not taken away, but ſtrengthened and augmented, and diverſe others raiſed: for thoſe men are moſt unfit for counſel who have their minds wholly poſſeſſed with perturbations and jealouſies, or their cogitations bent unto faction, or any ſiniſter deſigns. Theſe bring nothing with them but the ſpirit of contradiction, partial and intereſſed opinions, ſecret deſigns and open animoſities. And then it falleth out as *Tacitus* ſaith, *quæ apud concordes vincula charitatis, incitamenta irarum apud infenſos erant. Non ſic Romani antiqui qui privatas res ſuas pro Republica contempſerunt, conſuluerunt Patriæ conſilio libero, neque delicto, neque libidini obnoxii.*

Auguſt. de Civit. Dei lib. 5. c. 15. Imperator Conſtantinus ſcripſit ad Synodum Tyri ut conceptas rixas delerent, quia ſecum diſcordantes non liceret ad divinum cultum adeſſe, nec munera ſua offerre altari priuſquam ad mutuam pacem rediſſent, ut lege divina docemur. Euſeb. in vita Conſtant.

CHAP. VI.

The Right that Biſhops have to ſit in Parliament.

TO take a more particular view of thoſe things which deſtroy the ſtate and eſſence of Parliaments, we will obſerve in our paſſage ſome particular men of great eſtimation, abounding with pernicious hypocriſie, covering their deſigns under the cloak of counterfeit ſanctity, and having their iniquity ſupported and armed with Authority. *Ubi Dei numen praten-*

pretenditur ſceleribus; ubi nequitiæ ſuæ patrocinium de Scriptura ſacra requiritur; ubi liberator Patriæ inſidiator ipſe libertatis habetur, & tyrannos ulciſcendo, quæ odiſſent ſcelera, ipſi imitantur; ubi Parricidas publicos qui Regem ſuum occidiſſent, ipſos omnis Divini & humani juris violatores, pro vindicibus decoris publici ſe ipſos venditare, & liberatorum Patriæ nomen uſurpare. Such mens hypocriſie ſaith Saint *Auſtin*, *quia illa quæ mendaciter agunt, ſic agunt, ut populus eos veraciter agere exiſtimaret*, is moſt pernicious and damnable. When fraud or force have their influence over Parliaments, the ſtability of all matters there enacted is undermined; for ſuch acts prove but the ſeeds of future evils and immortal diſcord. In all well-governed Common-wealths, there hath ever been eſpecial care, that the Councils, Parliaments and Courts of Juſtice, ſhould be free from all force and coercion. By the Imperial Law, *ad palatium vel ad forum nullus miles ferat arma.* So by the Law of the Lumbards, *armatum in curia Domini jus non eſt ingredi, ut ſine rixa & ſine ſuſpicione procedant judicia.* The Interpreters of the Roman Law ſay, that arms ought not to be born in the Palace, neither in the confines, nor near the gates thereof, and ſo the Parliament of *Paris* gave judgment, agreeing with *Cicero*, *judicia nulla ſunt, dominante vi, vis maximè juri adverſa eſt.* And long before did the Roman Law puniſh by baniſhment, as guilty of the Law *Julia de vi publica*, him, who came armed unto their Tribunals and places of judicature, or through an evil intention did diſturb and hinder the peaceable proceedings of Judges and thoſe in authority, *qui dolo malo fecerit, quo minùs tutò judicia exerceantur, aut Judices ut oportet judicent, vel quominùs is qui poteſtatem habet, jus decernat, imperet, faciat.* Amongſt others of the like kinde, we finde in the tenth year of *Edward* the third two Proclamations, that none ſhould wear armour or weapons in time of Parliament. When *Sylla* brought his army to *Rome*, and cauſed himſelfe to be made Dictator by a Law, although made for fear, yet with all uſuall formalities, *Cicero* declared that Law to be no Law, but ſuch effects enſued, that the Roman Senate never recovered their former luſtre or liberty. The Court of Parliament of *Paris* gave a ſevere ſentence againſt ſome of the reformed religion (their name being crime enough)

Livius. *Auguſtin.* *Livius lib. 24.* *Buchan. Scot. hiſt. lib. 13.* *Lib. 2. tit. 27. de Feudis.* *Coſſan. catal. Glor. mundi.* *L. 10. F. de vi pub.* *Cook Inſtitut. 4.* *Thuan. lib. 23.*

Cauſ 11. *quæſt.* 3. *cap.* 89. *cum Gloſſâ.* and yet the ſentence was reverſed, *ut per vim & vitioſe lata*, in reſpect the Judges were over-awed. *Sententia per metum lata nulla eſt ipſo jure.* When the Proteſtant Princes and Cities of *Germany* were ſummoned to the Councel of *Trent*, ſome of them made their Proteſtation and appeal *ad Concilium Generale, pium, & legitimum*, and divers learned men declared, that the *Thuan. & alii.* Canons of that Councel could not binde, *quia Concilium illud fuit nullum, vitio indictum, habitum & terminatum.* It may well be granted that force offered to a Parliament may make void all their acts, if force or fraud uſed to procure the abſence *C* 28. *de Elect.* of one of the members may make all their acts invalid; *plus nocet unius contemptus, quam contradictio multorum*, according to the rule in the Canon Law; which ſayeth alſo, *ſi eos vocatos non fuiſſe conſtiterit, ſed contemptos, infirmanda erit penitus electio taliter celebrata*: Upon which *Gardner* Biſhop of Wincheſter *Stem Chron.* his aſſertion, ſeemeth to be grounded, who being priſoner in the Tower, wrote to the Lords in Parliament, claiming his priviledge of Parliament, and ſaid, that if the Rulers in a General Councel let any mans repair thither, who of right ought to be there, whatſoever is there concluded, is by a univerſal Law taken to be of no force, by excluding one member wrongfully that ſhould furniſh the body. The body ought to be entire and compleat. The Interpreters of the Civil and Canon Law, ſay, when we name a People, we are underſtood properly to intend the whole, or at the leaſt the major part: and when we mention the Chapter, *Capitulum*, we are preſumed to intend the whole body or number: *appellatione rei venit res integra; & qui de quantitate loquitur, de toto loqui cenſetur, quando natura rei, & ſubjecta materia hoc exigit, vel alioqui actus eſſet eluſorius.* But ſeeing all the members of a Parliament, or of any great Aſſemby or Corporation cannot come alwayes together, therefore by a univerſall Law or cuſtome, the preſence or concurrence of the major part of the whole, or of thoſe who are preſent, *L.* 3. *&* 4. *F. de Decurionibus. L.* 3. *F. de Decretis,* moſt commonly doth prevail. By the civil Law there muſt be in their Senate, Councel houſe and Municipal Courts two third

qui à duabus partibus Cardinalium electus ſit Romanus Pontifex habetur. In aliis electionibus quod ſit à majori & ſaniori parte Capituli, valet, conſueta forma ſervata. De electione cap. 6. *Decretal.*

parts

parts of the whole number present, for passing any act of importance, *duabus partibus adhibitis Totius, quia illa decreta non valent, quæ non legitimo numero decurionum coacto facta sunt.* But those acts had the force of Lawes to binde all men which were examined *ab omnibus proceribus in gratiosissimo Cœtu, & collectis omnibus recitantur, & cum omnes consenserint, tunc demùm in sacro nostri numinis Consistorio, recitari; ut universorum consensus nostra serenitatis authoritate firmetur.* This was the course observed in makeing their Lawes; for if men when they choose arbitrators, or Law-makers when they constitute Judges, or Princes when they grant a delegated power, in private mens causes, are never supposed to approve, of that which one man, or the fewer number of them do order, or decree, unlesse somewhat appear to the contrary; but onely of that which is agreed by the major part, all beeing present at the deliberation and debate, *quia tunc judicare intelliguntur, cum omnes adsint, licet omnes non consentiunt.* There is then much greater reason for the presence of the major part of the whole number in the supream Courts, Councils and Parliaments, *ubi de summâ Reipublicæ agitur.* And so may we presume was the intention of all Law-givers and founders of Common-wealths, although not expressed, unlesse necessity in some special cases and accidents doth otherwise require. In such accidents the Law sayeth, *paucorum absentia, sive necessaria, sive fortuita non debilitat quod a majori parte ordinis salubriter fuit constitutum.* But in Parliaments there is most reason for the presence of all the members for many respects, and cheifely because all & every County, City and Borough, who are to send their own Deputies & Representatives, be not without being heard, bound by the votes of others in all things, as well concerning their own particular, as the Common Interest, who are peradventure ignorant, and regardless of their condition, and men whom they never knew, nor to their election gave their consent. For in other Assemblies, Councels and Courts, there is not as in Parliament, of all Persons, states and degrees, either personally or virtually by representation, and intendment of Law, the presence, and as it ought to be to make a just and compleat Parliament, according to the ancient and continued Laws and customes of this Realm,

L. 8. *Cod. de legibus.*

L. fi. in tres. L. *item si unus:* F. *de recept. arbitrit.* L. *Pluribus.* F *de Procuratoribus* L. *si plures. l. cum plures.* F. *de Adminis. Tut.* L. 37. F. *de re judic.*

L. 45. *Cod de Decurionibus.*

Realm, and of other Kingdomes. And therefore the excluding of the Bishops and in them the whole Clergy, ever reputed one of the three estates in all Kingdomes, and called *Brachium Ecclesiasticum seu spirituale*, must needs be injust and prejudicious to the Church and common-wealth, and make a maimed and dismembred Parliament, the Clergy being barred from having their own Representatives and Deputies in Parliament: whereby the Common-wealth is deprived of their advice and assistance which may be, and oftentimes hath been found to be of excellent use, in respect of their great learning and judgment, wherewith many of them in all times have been amply adorned, and many of them of great fame for their piety and martyrdome, and have, as appeareth in histories, shewed their love to their Countrey, by many acts and testimonies, and in some times to their own destruction, for opposing the most powerful persons, when the greatest men of the Laity (who for the most part are of much inferiour abilities) have shrunk off and been silent. I cannot therefore perceive how we may approve of the opinion of those who hold that good Acts of Parliament may be made, *exclusō Clero*, and take the example of *Edward* the first for a Law, who because the Clergy would not still supply him with mony, after they had given him many great summs, he put them out of his protection, and then called a Parliament without admitting them. This being the case, it is an ill argument *à tali facto ad jus faciendi*. As if we should say the King and the Peers can hold a just Parliament, and make Laws and Levies of monies without the Commons; because long time after the Norman Conquest, Laws were made without them, which are still reputed good Laws. In England as well as in other parts of Christendome, in the time of the Saxons, Bishops were called to their Parliaments, and after the Norman Conquest, they were called as other were who held by a Barony: Their tenure as well as their function did warrant it. In the Constitutions of *Clarington* in the time of *Henry* the second it is said according to the Canon Law, that Bishops as other Barons, who hold of the King *in Capite*, *debent interesse Judiciis Curiæ Regis, quousque pervenitur ad mortem vel diminutionem membrorum*. Some members of the house of Commons, and others have formerly been lifting at the removal of the Clergy from

Chronic. Gervasii, & alii.

Sir Rob. Cot. Treatise.

from their ſeats in Parliament, in as much as anciently Eccleſiaſtical conſtitutions were often made by Chriſtian Emperours together with other civil Laws, but thoſe laws were no other then confirmations of former Canons made by the Church. And in divers Imperial and Eccleſiaſtical Lawes it is ſaid, *Sicut Leges Civiles non dedignantur Eccleſiaſticos Canones imitari, ita ſacrorum ſtatuta Canonum, Principum conſtitutionibus adjuvantur.* And alſo they did farther urge, how that in our Parliaments, Eccleſiaſtical laws in the time of the *Saxons*, and ſince were made; whereas the Parliaments did but confirm them at the petition of the Clergy, not frame and diſpute them. And if the Laity entrenched too far, the Clergy uſually made their proteſtation. And he in the ſaid Treatiſe alſo ſaith, that Church-laws in Parliament did not move from the Lay-members, and that the ſucceſs of the Laity was ever fruitleſs in all their endeavors to eſtabliſh laws Eccleſiaſtical without the Clergy. Although by the Imperial Law, Churchmen ſeem to be generally forbidden to deal in ſecular affairs and offices, and ſo by the antient Canons of the Church, *Clericis opprobrium eſt immiſcere ſe forenſibus negotiis, ſeu diſceptationibus: Non ſuſceptores vel exactores tributorum fieri debent: nec conductores vectigaliorum, vel alienarum poſſeſſionum, nec actores vel procuratores vel fidejuſſores eſſe: Nec Clerici Juſticiarii ſeculorum Principum eſſe debent. Tit. ne Clerici cap. 4. Decretal.* yet are Biſhops allowed by the antient cuſtome in Kingdomes, and by the Judgement of Divines and Lawyers to be Chancellors and Treaſurers of Princes, and to be Embaſſadors, to have their voyce in Parliaments, and to be of the counſel of Princes, without any derogation or prejudice to their Eccleſiaſtical calling. For the Prelates and Churchmen being *brachium Eccleſiaſticum* ever reputed as Deputies of the Kingdome, and one of the three Eſtates of a Kingdome, as well as the Laity, *ratione Eccleſiæ quam regunt, & dignitatis quam in Regno habent, & dicuntur Cives originarii, licet ſint alienigenæ*, as the Lawyers ſay. The Prieſt is a Pillar of the Common wealth, wherein.

L. 23. *Cod. de Teſtam. cauſa* 11. *q.* 1. *cap.* 29. Novel. *Juſtin.* 123. *Quod congruit cum Chalcedon. Synod. c.* 16. *Cuiacad dict. Novel.* 123. *Qui divino miniſterio conſecrati ſunt, hos ab externarum rerum occupationibus & moleſtiis liberos eſſe oportet, ne rebus impuris adhæreant ac in terrenis ſordibus volutentur, ut cautius divinius que vivant: Conſtitut. Leonis Imperat.* 68. *& dicit Apoſtolus, nemo militans Deo implicat ſe ſæcularibus negotiis.*

in he faithfully ſerveth God and diſchargeth his duty. The Scribes and the Prophets and the Preiſts were admitted into the Publick Counſels, and ſome of the Levites and Preiſts, were joyned with the fathers of *Iſrael* to Judge in controverſies.

Jerem 26 11.

2 Chron. 19.

Alb. Gentil. de nup. l. 1. c. 14. *Etſi utraque functio civilis & Eccleſiaſtica, hominem totum requirit, tamen naturâ ſuâ non pugnant in uno homine, licet pugnent naturâ hominis incapacis utriusque: non eſſe incompatibile munus Eccleſiaſticum & Civile, bene tamen disjuncta retineri*, Howſoever thus much may follow the too much reſtraint of the Clergy, although it be to keepe them within the limits of their function, that their Perſons will be brought into contempt, and thereby paradventure their function and miniſtery, eſpecially with the vulgar; and they themſelves will fall into a careleſſneſs in ever ſeeking the advancement and welfare of their Country, wherein they ſcarce finde ſo much favour as aliens, and cannot obtain thoſe rights, which have been granted unto them by *Magna Charta*, in theſe words *Eccleſia Anglicana habeat omnia jura ſua integra, & libertates ſuas illaſas &c.* Of which none of the leaſt is the having voice in Parliament, for *ſuffragii lationem cuique homini eripere, eſt civitatem libertatemque eripere; & durior ſeveriorque ſit ſententia non moveri ordine quam moveri, ſi honores ordinis adimantur.* And ſeeing the Clergy are Citizens and Subjects, and are parts of the Common-wealth and liable to taxes, tributes and other burthens which are not incompetent, but may ſtand with their calling, by parity of reaſon, they ſhould not be deprived of thoſe rights and priviledges which others enjoy, when the uſe of them doth not derogate, neither hinder the exerciſe of their function and miniſtry. So then the abſent who ought to have voice are to be called to the debate of matters, eſpecially of greateſt importance, or elſe the abſent are not bound by Law, neither thoſe who are preſent, if they are not the major part of the whole number, much leſs the whole and entire body, *Actus minoris partis univerſitatis, neque iſtam minorem partem obligat, quia quaſi ſic actum fuiſſe præſumitur ab iis, ut non aliter quam veluti univerſitas obligaretur, & ibi non eſt univerſitas, abſente majore parte univerſitatis.* The authority of the whole is ſaid properly to be transferred to the major part preſent, when the matters and things to be determined concern the community and univerſality

Livius. *Plin. Epiſt.*

Bartolus & alii.

ſality, and are belonging to the entire body, and concern little or nothing particular intereſt. But when there is a conjunction of both common and particular intereſts, there is a neceſſity of having thoſe particular conſents, or at leaſt their preſence: *quod pertinet ad omnes, non tanquam ut ad univerſos ſolummodo, ſed etiam ad particulares & ſingulos disjunctim, quorum intereſt ut ſingulorum, tunc non ſufficit res adprobari à majore parte, ſed ab omnibus & ſingulis.* When prejudice may happen to ſeverall places and perſons in their own particular, then the conſent, or at leaſt the preſence of all is neceſſary. By which reaſon after the generall Councels war ended, the Prelates who were preſent at the Councels cauſed the Canons agreed unto to be ſent unto thoſe Provinces and Churches, whoſe Prelates were abſent, notwithſtanding they had Lawfull ſummons; becauſe thoſe Churches ſeemed not to be bound by thoſe Canons unto which their own Prelates gave not their conſent. And yet by the Canon Law, and in many caſes by the Civil Law, *voluntas ſeu conſenſus requiritur in ipſo actu, nec poſſit ex intervallo præſtari, maximè ubi ſolennitas & tractatus præcedens, ſeu conſenſus vel authoritas requiritur de jure & neceſſariò pro forma & ſolennitate actus.* Moreover the particular members of a body Politick or Parliament cannot give their conſent or diſſent *disjunctim* and in ſeveral places, unto that which is of publick and common concernment and intereſt, but when they are aſſembled in due form and ſolemnity. We perceive by the judgement of wiſe and learned men, and by experience in all times, how precious is the preſence, and prejudicial the abſence of Judges, Counſelors or Parties intereſſed. The Romans were ſo ſtrict in the caſe of a private man condemned to dye by one voyce, more then there was for his acquittal, that the ſentence was ſuſpended becauſe of abſence of one of the Judges. Sometimes by one man all are brought from an error. By the Counſel of one man a puiſſant army hath been deſeated. One *Epheſius* prevailed with the Romans in Councel aſſembled, to ſend into Greece to get their Laws, whereupon the Romans did ground and forme their excellent Laws of the twelve Tables, *Fons omnis juris publici privatique.* Onely *Gamaliel* prevailed with the Jews in their Counſel, and ſtaid thei furious proceedings againſt the Apoſtles. The Councel

Baldus & alii.

Platina.

Plutarch. in Cato.

Polibius.

Livius.

Act. 5.

Sosomen. of Nice concurred in their Judgment with *Paphnutius*. The Emperour *Frederick* the second kept divers Cardinals in prison, and the Pope dying during their imprisonment, the other Cardinals would not proceed to the Election of a new Pope, neither could they by law, as they affirmed, untill their fellows were released: and those who were under restraint made their protestation against any election during the time of their imprisonment, so as the See of Rome was void twenty moneths. When the Roman Senate discontinued their antient custome of having a full number alwayes present, opportunity was given and taken for the setting in hand a most pernicious abuse and practise, as *Asconius* observed, *ut per paucu-los faciebant Senatus-consulta, & ii omnes suæ factionis, à quibus quod libitum erat facilè impetrabant*: when none were present, but those of their own faction, they did what they list, and the others who were absent betrayed their Countrey, in neglecting their duty. *Quid æqui possit expectari ubi per infrequentiam furtim Senatus-consulta facta sunt? In the multitude of Counsellors there is safety*, saith *Solomon*. Thus the Roman *Decemviri*, when they had setled their authority, they changed their former moderate course, and had daily secret meetings, like our close Committees, apart & inclosed from others. At home they determined how matters should pass, and in open place they pronounced the sentence accordingly. The common opinion was, that they had conspired not onely for the present time to do wrong, but were confederated, and bound it by an oath to hold the possession of the Decemvirship for ever.

Platina. & alii.

Livius lib. 39.

* *Valerius Flaccus* being made *Inter-rex* in a vacancy, the Consuls being absent, preferred a law, that *Sylla* should be perpetual Dictator, and do what he list. *Cicc. Appian. Livius lib.* 3.

CHAP.

Chap. VII.

The neceſsity of having all the Members preſent in Parliament, or the greater number of them, and the danger of Confederations, Aſſociations, Ingagements, and other indirect practiſes, contrary to the Rights of the King, and the liberty of the Subject.

As the abſence of any of the Members make all their Acts void, or voidable, when their abſence is cauſed by fraud, force and tumults, ſo are the Acts of all that are preſent void, and their rights and priviledges ceaſe, when they who ſit and act, change the Parliament into an unlawful Aſſembly, and by covert and indirect practiſes, conventicles, aſſociations, contrived in cloſe Committees, endeavour to circumvent the King, or to enforce him, and to abuſe the people and the truſt repoſed in them; All Aſſociations, Conventicles and confederations, without warranty from the Supream Authority, are by all Lawes Divine and Humane void, as being the moſt effectual means to diſturb the peace, to introduce innovations in the State, and to weaken all bonds of loyalty and obedience. *Qui faciunt ligam vel ſocietatem ad eorum defenſionem, ut Florentini, Peruſini & alii: hoc exprimunt, ſed aliud in veritate agunt. Iſtud eſt ſignum proditionis, & proximè poſt hoc cadebant ab Imperio Romano, & pro liberis ſe tenebant.* But thoſe Aſſociations are the worſt which being in themſelves unlawful, have the countenance and ſupport of Parliamentary authority, *ut unde jura naſcuntur, injuriarum naſcatur occaſio*, when that which ſhould have been for our wellfare becometh a ſnare, when the Leaders of the People cauſe them to erre, and they that are led by them are deſtroyed; like the authority of the Roman Tribunes of the People, which the People did adore. But *Appius Claudius* ſaid unto them, ye give a favourable ear to all your Tribunes, although they ruine the Common-wealth, and ye being thus carried away by the ſweet-

Bart. ad tit. qui ſunt Rebellis. Bald. ad tit. quib. modis feudum amit. cap. 1.

Livius lib. 3.

neſs of that authority, ſuffer under it to lurk any miſchief whatſoever. This power and the exerciſe thereof by the Tribunes was the cauſe of frequent ſeditions: *Florus lib. 3. cap. 13.* *Quæ authoritas ſpecie quidem tuendæ Plebis, cujus in auxilium inſtituta erat, re autem dominationem ſibi adquirens, ſtudium & favorem Populi legibus agrariis, frumentariis, judiciariis aucupabatur; in quibus omnibus inerat ſpecies æquitatis, ſed hæc ipſa in perniciem redibant, & miſera reſpublica in exitium ſuum merces erat.* It was one of the cheifeſt articles againſt *Peirce Gaviſton* of treaſon, in *Edward* the ſeconds time, that he aſſumed Regal power in makeing alliance and confederation with the People, and tooke an oath from them to live and dye with them. Theſe aſſociations and confederations draw unlawfull aſſemblies, and ſedition; and therefore by the Roman Law, he was guilty of treaſon, *L. 1. F. ad leg. Jul. Ma. L. 3. F. de vi publica.* *cujus conatu cœtus conventusque ſunt hominésve ad ſeditionem convocentur, vel qui turbæ vel ſeditionis conſilium inierunt,* And therefore as in the Law, *Conventicula, omnesque conventiones inter Perſonam & Perſonam, inter Civitatem & Civitatem omnibus modis fieri prohibemus, & præteritas factas caſſamus.* *Lib. 2. de Feudis. tit. 53.* And alſo thoſe who ſuffered Conventicles in their houſes were puniſhed, and their houſes confiſcate: *L. 15. Cod. de Epiſc. & Cler.* *Publicatur domus in quo fiunt Conventicula illicita: domum vel poſſeſſionem ejus in quâ convenerunt, ſanctæ aſſignari Eccleſiæ,* by an other Law; *L. 8. 8. 5. Cod. de Hæreticis: Novel 132.* *Clerici & monachi conjurantes, vel conſpirantes, aut factiones componentes aliquas, deponuntur & omnino cadunt de proprio gradu.* *Caus. 11. c. 21.* By the golden Bull of the Empire, all unlicenced confederations made between the Princes, Cities and ſtates of Germany (ſubjects much more at large then others) are ſtrictly prohibited: for aſſociations and confederations are proper onely to the ſupream Powers, are *inter jura ſumma Imperii: unio ab inferioribus fieri non debet,* as in the Canon Law. *Jus fœderis faciendi,* is *juris publici & imperii,* and ever ſo reputed by the Laws of Nations, as well as the rights of makeing war and Peace, and of arming and araying of men; of ſending and receiving Embaſſadors. No one of which doth belong unto ſubjects, and whoſoever uſurpeth this power is guilty of treaſon; *L. 3. F. ad legem Juli. majeſtatis.* *Privatus qui pro poteſtate magiſtratúve quid geſſerit,* or doth keep the power longer then he hath warrant by Law, or from his Prince; *Ita Patrocinia injuſta omnibus modis*

modis corrigenda ſunt, nec ullus aliorum vitas ac bona patrocinio ſuo defendere debet: ſufficit lex & favor Imperii: and by many imperial Laws under great puniſhments, *prohibentur potentiores patrocinium præſtare, & alii rem vel litem in potentiorem transferre.* For confederations and protections are coincident and correlative. By the law no promiſe or contract can bind, which is againſt the publick right and intereſt: *nulla conventione juri publico derogari poſſit: generaliter quoties pactum a jure communi remotum eſt, ſervari non oportet, nec tale juramentum ſervandum eſſe, quia contra bonos mores eſt*: no Oath or Vow can bind, which is *contra bonos mores, vel contra vim & authoritatem juris.* And ſuch are the vowes made by thoſe who are in ſubjection, and are not *ſui juris, ut Filiifamilias & ſervi*, without the conſent of their Fathers and Maſters. By the Divine Law, ſaith Saint *Ambroſe*, the Daughter is to have the conſent of her Father, and the Wife of her Husband, for the ratification of their vows, without which the Father and the Husband may diſannul them. And ſo by the Canon-law a man is not bound by his Oath or Vow without the conſent of him under whoſe power he is. Although we do not take in all this ſtrictneſs into the oaths of Subjects, yet we muſt grant, that in all obligations, as well as in oathes, the Soveraign power hath ever its reſervation expreſſed or implyed. *Cum prædictum juramentum vos excuſare non poſſit, in quo debet intelligi jus ſuperioris exceptum, ut in omni ſacramento fidelitatis, Imperator nominatim excipiatur; ac etiam tacitè id intelligitur, nec ulla quidem indiget adjectione*: ſo as no obligation can be exempted from the conſtruction, or limitation of the Law; neither can any Oath or Vow, as the Divines ſay, be accounted other then a raſh and unlawful Vow or Oath, which is *contra facultatem noſtram, vel cum vocatione noſtra pugnat.*

Novel. 17. 2. 13.

L. 27. de Reg. jur.

L. 7. F. de Pactis.

L. 112. de leg. 1.

Numb. 30.

Decretal. de jurejurando. cap. 19.

Lib. 2. de Feu. dis tit. 55. & 7.

As thoſe are abominable Aſſociations, Covenants and confederations made amongſt ſubjects in a Parliamentary form, and under that abuſed authority, of which I ſhall ſay more hereafter: ſo are thoſe as bad, which are made with the concurrence or connivence of the Soveraign, who thereby doth lend his hand to deſtroy himſelf, contrary to all Policie, reaſon of State, and to the rules of Government, as doth appear by the example of *Henry* the third of *France*, who being oppreſ-

oppreſſed by a Civil war, was by the power and cunning of the houſe of *Guiſe*, and other Aſſociates in the holy League, made in ſhew onely againſt thoſe of the Religion, drawn at length to ſubmit unto this league, through his prepoſterous zeal in Religion, and deſire to ſatisfie the ignorant and deluded people, abounding in a wilful errour framed out of affection, then which nothing is more violent and furious. The King thus joyning in this league, became but as one of the number, in whom they did not confide; he ſignified but as a ſmall figure in the total ſumm, and was rather an acceſſary then a principal, in whom appeared little or nothing of King, but the name; whoſe deſtruction ſoon after followed, and almoſt the ſubverſion of the French Monarchy. King *Perſius* being extreamly preſſed with hard conditions by the Romans, his Counſel were of opinion, that in parting with ought belonging to his ſacred rights, and yielding one thing after another, he muſt make account to quit the free hold of his Kingdome ſoon after: Such conceſſions and relaxations, are but invitations and ſteps to more inſolent demands and grievous preſſures: *Quicquid de Majeſtate Regia ceſſerunt Reges, cum eo ſimul de ſummâ rerum periclitandum eſſe. Inter fortunam maximam & ultimam nihil intereſt: Imperium habentibus nihil medium inter præcipitia & ſumma.* It is a ſtrong preſumption that Princes are very defective in their government, when their ſubjects are riſen to ſo high preſumption, as to make aſſociations, covenants and engagements in a Parliament againſt their will, whereby they raiſe a new allegiance in the People, and introduce new laws and forms in government deſtructive to the old, which produceth an Anarchy and confuſion. Although for the making of theſe they pretend, and peradventure intend the preſervation of Religion, their rights and liberties, and the releaſe and prevention of grievances and burthens; yet this prepoſterous courſe, this indirect and violent means uſed toward their Soveraign much weakneth, if it do not overthrow the juſtneſs of their cauſe, in caſe their cauſe were juſt, and maketh the cure worſe then the diſeaſe. But oftentimes the preſervation of their rights and liberties is pretended, that the preſent government and Empire might be overthrown, and when they have prevailed therein, then

Livius lib. 42.
Thuanus.
Seneca.
Tacitus.
Tacitus.

ſet

ſet they forward the deſtruction of liberty. The Romans, ſaith Saint *Auſtin*, were firſt ſtirred up by their love of liberty, and then the deſire of dominion ſeiſed upon them; for liberty ſeemed little worth, unleſs they had domination and rule. Liberty gotten by evil means, cannot be kept, but by power, and power cannot be kept and aſſured without dominion, and thoſe who proſper in their iniquity continue therein: *Scelera ſceleribus tuenda: principatus quem aut ſeditio extorſit, aut ambitus occupavit, etiamſi moribus atque actibus non offendit, ipſius tamen initii ſui eſt perniciosus exemplo; & difficile eſt, ut bono peragantur exitu, quæ malo ſunt inchoata principio.* Many are the examples of Subjects thus perniciouſly and intricately ingaged againſt their Prince, and in danger of being reduced under the obedience of him whom they have ſo much offended, and could neither truſt, nor be truſted, never did think themſelves ſafe, either by ſubmiſſion or compoſition, if they disbanded their forces, and kept not their ſword in their own hand. And therefore to help themſelves any other way rather then to reſt upon any aſſurance which their Prince can give, if they diſtruſt their own ſtrength, they have often put themſelves under the protection of a forraign Prince, and, as *Bodin* obſerveth, from Clients they fall to be Subjects, and ſoone after from Subjects they become ſlaves. But if they do eſcape from being ſlaves or Subjects to their new Patron and Protector, which is very rare, yet they fall into diſcontents and jars with him, who never truſteth them, and never part fairly from him, or from any Prince, by whoſe power they have been ſupported againſt their Soveraign. Moreover thoſe who have been contrivers and chief actors in a Rebellion, and have affrighted and cheated the People out of their Allegeance, and quiet eſtate, and drawn them to their faction, they are like thoſe Ringleaders in the Rebellion of the Roman Colonie, who when they found many of their followers inclined to ſend a ſupplication to Rome, they could not indure it, *privato periculo eorum publicum implicitum erat*, they intangled the Common cauſe in their own particular danger, and fearing that they at laſt ſhould ſuffer for all the reſt, and be made a ſacrifice to the Romans wrath, they turned the Colonie not onely from all conſultation of Peace, but incited them to invade and ſpoil the:

L. 5. c. 12. *de Civit. Dei.*

Seneca. Decret. cauſa 11. cap. 25.

Livius lib. 6.

the Roman territories, and by addition of new insolencies to put them from all hope of peace and reconciliation, and so did they ingage all as far-forth as themselves for their own particular interest and safety.

In these great attempts and dangerous experiments upon a state and Common-wealth, although men do not set, as commonly they do, specious colours upon foul designes, but do really aime at some good reformation, and intend to proceed upon justifiable grounds and reasons, or at least so seeming unto them, yet soon after they have taken the worke in hand, begun upon better intention than warrant, the Scene is changed, and they slip almost insensibly into the use of dangerous and unlawfull means, through the many oppositions and difficulties which dayly do incounter them, and into strange and unthought of labyrinths, and are driven through hopes and feares, which are great instigations to violent motions, especially if they are possessed with pertinacious spirits, to use those means which peradventure at first their heart did abhorre. As if they seemed to take a pattern from those mentioned in the book of Wisedome, who say, *Let our strength be our Law, and*
Cap. 2. *let us lye in wait for the righteous, because he is not for our turn, but is contrary to our doings:* He that is not for us, is against us. For ambition, fear, desire, revenge, are passions without rest or bounds, and if they meet altogether, as commonly they do in such men, they value nothing that standeth in their way, neither think themselves ever secure, being plunged in these perturbations, and beset and imbroiled on all sides, but still they carry the faces of men who expect nothing but revenge on them either by servitude or death, in case they sink under their burthen. And when they have driven their iniquity to the height, and involved the seduced People in crimes, and at last finde every mans hand against them, they regard not if their Country perish with them, and in their own sight; which unto all men indued with reason is the most horrid spectacle in the
Livius lib. 45. world: As *Theodutus* said to his fellow-citizens, tyrannized over by two men of greatest power amongst them, that *he had often heard of men that for the love of their Country had willingly lost their lives; but those two were the first, that ever were willing their Country should perish for them.* But if these high flyers prevail,

vail, then doth their prosperous iniquity kindle in them vast desires, *immoderata, incredibilia, nimis alta cupiebat*, as was said of *Catiline*, and they strive as if they would give unto nature a law. *Sallust.*

Yet as their prosperous iniquity is intolerable to others, so are they requited in having it as unsafe for themselves. *Intolerabilis in malo ingenio felicitas est, sed nunquam stetit in solido superba felicitas*: and of this the Divine Oracles gives us an undoubted assurance: *When all the workers of iniquity do flourish, yet shall they be destroyed for ever. A man shall not be established by wickedness. Their root shall be but rottenness, and their blossome shall go up as dust. He shall bring upon them their own iniquity, and cut them off in their wickedness. The heavens shall reveal their iniquity, and the earth shall rise up against them.* The Royal prophet notwithstanding, sheweth the disturbance in the minds of men, and the great conflict he had in himself, when he did see the prosperity of the wicked, and the calamities which fell on those which feared God, untill he considered their end, and how God did set them in slippery places, and cast them down into destruction. By the calamities falling on just men, and by the prosperity of the wicked in this life, we may perceive that the great Judgement is to come, and that reward and punishment are not to be judged by the things of this life, which fall in like manner both to good and evil men: *Non magni pendere seu bona seu mala quæ vidimus esse bonis malisque communia, sed illa bona quærere quæ bonorum, atque illa mala maximè fugere, quæ propria sunt malorum.* When men according to their desire have had success in their rebellion and violent change of Government, and that the lot is fallen into their lap, yet the whole disposing thereof is of God, who often granteth them their desire, but yet for their greater punishment, and for as great judgement upon a people and Nation. It was observed that after the Cities of *Italy* had cast off their subjection to the Roman Empire, as a burthen too heavie, they governed themselves not like free States, but as a people divided into several factions and Sects, which drew on them a deluge of evils: for Laws being undervalued and laid aside, they sought to support themselves by Associations and part-takings; and as one

Seneca.

Psal. 92.

Prov. 12.

Isaiah 5.

Psalm 94.

Psalm 75.

Ecclesiastes 9.

August. de Civit. Dei. lib. 20 cap. 2.

ſide grew overpowerful and formidable to the other, and wanting ballance for the weaker ſide; that ſide ſo overpowerfull ſoon fell into ſeveral branches and ſubdiviſions, and after into ſuch confuſion, all of them, that ſome of thoſe who were of one party, were joyned in ſome reſpects and Intereſts with others who adhered unto a contrary party. And ſo they fell into a civil war, which received no end (as it is moſt commonly) untill one ſide was deſtroyed, and then the whole ruined at laſt, and tyrannical Government eſtabliſhed by the prevailing party. And thus the Italians became a prey to ſeveral Tyrants and Uſurpers almoſt in every City. And then followed not long after the faction of the *Guelphes* and *Gybellines*, which as *Paulus Jovius* ſaith, was *longè graviſſimus, & ſummè lugubris tumultus; non urbibus modo atque oppidis, ſed pagis agreſtibuſque familiis eodem inſaniæ morbocorreptis vaſtitatem attulit: cum cædibus incendiiſque graſſari, cognatis, affinibuſque extremam vim afferre, ſacra non ſecus ac profana violare fas putarent; virtutis & gloriæ loco ducerent, ſi adoſtendendum inſigne factionis ſtudium maximè crudeles evaſiſſent.* Theſe were the fruits of ſedition and part-takings after they had ſhaken off their ancient eſtabliſhed Government. And thus they made the way eaſy for the conqueſt of them afterwards by forraign Nations; as *Tacitus* ſaith of the eaſie conqueſt made of the Britains, who formerly obeyed Kings, *Sed nunc per Principes factionibus & ſtudiis trahuntur.* The Italians in theſe factions and ſeditions ſucceeded the Romans their Progenitors, the moſt puiſſant and glorious People of the world, who after they had firſt fallen into factions, and then into Civil-war, could never be cured of their malady, but by another, which was the uſurpation of *Julius Cæſar*, and the Tyrannical Government of his Succeſſors, and were compelled to ſubmit unto a Monarchical Government, which of all other they moſt hated. Albeit they and others alſo often found miſery enough, under the Tyrannical Government of many maſters at one time, as it is in a popular Government, of which *Bartolus* ſaith, that *regimen plurium malorum, vel regimen Populi perverſi non diu durat, ſed de facili in tyrannidem unius cadit, & hoc ſæpius vidimus.* There was no remedy left for our Countrey, to appeaſe the diſcord, but by the Govern-

De Tyranno, & de regimine Civitatis.

Government of one man, *omnem poteſtatem ad unum conferre, pacis interfuit: Neceſſe fuit Reipublicæ per unum conſuli:* There had been no ſafety, *niſi Populus ad ſervitutem confugiſſet:* Into ſuch times we are fallen, *quibus nec vitia noſtra, nec remedia pati poſſumus,* they could neither endure the malady, nor the cure, neither diſcern which was worſt. Thus the Egyptians long before had given them an example, who after they had fought each one againſt his brother, their counſels were deſtroyed, and the ſpirit of errour mingled amongſt them, and they were delivered up into the hands of cruel Lords, and mighty Kings had dominion over them.* Tacit. Annal. 1. L. 2. F. 2 de Orig. jur. Florus. Livius. Iſaiah 19.

* Such as King *Antiochus*, who took away the daily Sacrifice, and the place of the Sanctuary and placed abomination, that made deſolation. Daniel 8. verſe 11. and Chap. 11 v. 31.

Chap. VIII.

Of Seditions, and ſeditious Aſſemblies, and the puniſhment thereof; Of the power of the King, in that which concerneth the Militia, and the Arms of the Kingdome; And of other Rights of the Crown.

We may perceive what are the fruits and events of Aſſociations, Covenants and Ingagements, to wit, Sedition, Rebellion, and Civil war. Seditions have been the onely bane of moſt flouriſhing Cities, whereby mighty Empires become mortal. They are in direct oppoſition to Juſtice, to the Common good, to the peace and unity of the People, which are the Pillars of all Societies. The Common-wealth, as was ſaid before, is *cœtus juris conſenſu & utilitatis communione ſociatus*, ſo as it is manifeſt, that the unity which Sedition doth oppoſe, is the unity wrought by the bond of Lawes, for the common profit and welfare of the People. *Seditio eſt res perniciosiſſima, quippe quæ populi, civitatis, regni unitatem, juſtitia & utilitate communi nitentem deturbat & diſſipat: eſt* Livius lib. 3. Aquinas.

ſemper peccatum mortale de ſe, & principaliter eſt in procurantibus; opponitur unitati & paci ſeculari, ut ſchiſma, ſpirituali. And therefore we do find amongſt all Nations, ſevere lawes and puniſhments againſt raiſers of Sedition. So great a crime and odious it is, that the Jews when they had ſtrained their malice to the height againſt our Saviour, could find no crime more capital and likely to ſerve for their purpoſe, then by accuſing him to *Pilate* and *Herod* of being a perverter of the Nation, and one who ſtirred up the People: And ſo did they accuſe Saint *Paul* for being a peſtilent fellow, and a raiſer of Sedition, The Law ſaith, *Nemo conclamationibus utatur, nemo movcat tumultum ſeu ſeditionem ſub pœna ultimi ſupplicii, ubi cœtu conventuque facto homines ad ſeditionem convocantur, quod incidit in crimen læſæ Majeſtatis.* Thoſe who uſed clamorous ſpeeches to the Prince or people, *Qui ſuſcipere Plebem tentaverit, qui aliquid petunt à Principe, vel populo tumultuoſis clamoribus; qui coacta multitudine magna vociferatione quid petunt à Principe vel Populo, tumultuoſis clamoribus, ut ſeditionis auctores puniri. Seditioſi plectendi ſunt capite, ſi ſæpius ſeditioſe & turbulentè ſe geſſerint: & nonnunquam puniuntur pœnâ criminis læſæ Majeſtatis.* By the more ancient law of the Romans, before the raign of the Emperours, he was guilty of treaſon, *Qui adverſus populi Romani ſecuritatem crimen committit, qui convocatis hominibus vim facit, vis publicæ reus eſt, quia publica pax turbatur, coadunatis hominibus, & omni armorum motu, publica ſecuritas offenditur*, as ſay the interpreters of Law. We find in our moſt ancient Law-books the raiſing of ſedition to be a Capital Crime. *Placita de crimine læſæ Majeſtatis, ut de nece vel ſeditione Domini Regis, vel exercitus ejus: ad ſeditionem Domini Regis vel exercitus ſui.* I omit the Laws of other Nations.

Luke 23.

L. 5. *Cod. de his qui ad Eccleſ. Paul. ſentent. lib. 5 tit. 22.*

L. 1. *F. ad leg. Jul. majeſtatis.* L. 1. *l.* 2. *Cod. de ſeditt. Conjec. paratit. ad l* 3. *S.* 1. *F. de vi pub. l.* 3. *c.* 4. *F. ad leg. Cor. de ſicariis.* L. 28. *F. de pœnis.* L. 1. *ad leg. Juli. Majeſtatis.*

L. 1. *F. ad dict. leg. Jul. Auctores ſeditionis & tumultus, qui concitato populo, pro qualitate eorum, aut in cruce tolluntur, aut beſtiis objiciuntur, aut in inſulam deportantur. Paul. ſentent. lib.* 5. *de Seditioſis. Hengham. cap.* 2. *Glanvil. lib.* 1. *c.* 2. *Bracton. fol.* 118. But there is a difference between thoſe who do onely raiſe Sedition and War in the Common-wealth; and others who contend for the deſtruction of the Common-wealth. *In civilibus Diſſentionibus, quamvis per eas Reſpublica lædatur, non tamen in exitium Reipublicæ contenditur; qua ſunt hujuſmodi quæ non ad delendam, ſed ad commutandam Rempub. pertinent. Cicero. & l.* 21. *F. de Cant. & poſſ. l.* Thus the Iriſh juſtifie their late Rebellion againſt the Engliſh Rebellion, in that they did not ſtrive to deſtroy the King, or the Kingly government, as did the Engliſh.

When

When Sedition and Rebellion have found entrance, they presently enter into a breach of two principall Pillars and rights of Empire, ever accounted *inter jura ſummi Imperii*; the one is, the Uſurpation of the power of raiſing Money upon the people; the other is, the Arming and drawing together of Soldiers. For the firſt, the law provideth, *ut vectigalia nova, nullo decreto Civitatum inſtitui poſſint, nec ultra antequam conſuetudinem, inconſulto principe; nec ſufficit quod agatur de communi utilitate ſeu neceſſitate civium, niſi ob damnum inevitabile evitandum: Qui nova vectigalia exercent, tenemur lege Julia de vi publica, quia vis Reipublicæ datur*: Force is thereby offered to the Common-wealth, as much as by raiſing and arming of Soldiers, the other apparent uſurpation of Regal Authority. *Nulli prorſus nobis inconſultis quorumlibet armorum movendorum copia tribuatur.*

Tit. Cod. nova vectig. lib. 10. F de Publicanis. Deciſſ Rota Rom. L. ult. F. de vi pub.

Tit. Cod. ut arm. uſur. Lib. 17. Cod. de re milit.

This is a univerſal Law at this day in all Kingdomes and Common-wealths, and before this Law the ancient Law of the Romans made him guilty of high treaſon, *qui injuſſu Reipublicæ bellum geſſerit, delectúmve militarem habuerit, exercitum comparaverit, vel quò homines armati cum telis in urbe ſint*, and with this agreeth the common ſaying, *nemo tractet ferrum, niſi qui ſceptrum*; the ſword and the ſceptre go together: *Ordo naturalis mortalium paci accommodatus hoc poſcit, ut ſuſcipiendi belli authoritas atque conſilium penès Principem ſit.* Our Laws and ſtatutes concurre herein, and eſpecially in prohibiting the arming of men, without the Kings authority, and of this, one proofe amongſt many may ſerve for all. In the ſeventh year of *Edward* the firſt, the Parliament did fully acknowledg, that in them was no power to deale in matters of armes; the words of the Statute are, that in all Parliaments men ſhall come without force and armour, well and peaceably to the honour of us, and of the Peace of us and our Realm: and that all the Prelates, Earles, Barons and Communalty aſſembled have ſaid, that to us it belongeth, and our part it is by our Royal Segniory ſtrictly to defend wearing of armour, and all other force againſt our Peace at all times, when it pleaſeth us, and to puniſh thoſe which do the contrary, according to our Laws and uſages of our Realm. The Subjects are bound to go with the King to the wars at home and abroad, and

L. 1. L. 2 F. ad leg. Juliam Majeſt.

Auguſtinus.

Cook Poſtnati.

and this sheweth natural allegiance not to be local, as doth appear by the Common Law, and by divers Statutes declarative of the Common Law. It is the Kings peculiar right to call all his Subjects to armes, especially all those who hold by knights service, and to carry them with him, when he maketh a voyage Royal, or send a sufficient man in their place, or pay Escuage. And therefore there can be found no Law or reason, to justifie the imaginary right of the People or Parliament in the *Militia*.

Cook upon Littleton.

Salustem Reip. tueri nulli magis convenire quam Cæsari, nec alium ei rei sufficere quàm Cæsarem, qui cohortes militares opportunis locis constituit: eam esse conditionem Imperandi, ut non aliter ratio constet, quam si uni reddatur. As there are somethings which a King cannot get from his subjects, but being either wrested from them, or imposed upon them, do destroy the essential pars of natural and just liberty, and doth render them rather slaves, then free-men: so are there also some essential rights of the Crown, which the Subjects cannot obtaine from their Soveraign, by any grant or prescription, without destroying the essential and individual rights of Monarchie. A King cannot grant by his Charter, neither lose by prescription, as all the Interpreters of the Laws agree, those rights called the flowers of his Crown, which are *Regalia suprema, & summa jura Imperii, regno tuendo servientia*, inherent to his Royal Function and Politick Capacity, and serve for the strength and support thereof. And so by the Canon Law, *Licet generalis sit tibi concessa legatio, ad ea tamen sine speciali mandato non debuisti manus extendere, quæ in signum privilegii singularis sunt tantum summo pontifici reservata. Illa jura non sunt in commercio, quæ propriè sunt Dominii, Diadematis, Domanii Regii, quæ sunt de bonis & juribus reservatis in signum subjectionis, & recognitio supremi & universalis Imperii seu potestatis*; for by such grant, or release would ensue, as the Lawyers say, *deformationem, demembrationem & turbationem publici Status & imperii.* And such are the rights of making war and Peace, of having the last appeale unto him, or to his great Councel and supream Court; and of making leagues, and of dispensing with penal Laws, granting pardons, and such like. For the exercise of his just rights and the administration of his Regal office is committed unto him by God, without any permission

De off. Præfecti vigil. F. Salust.

Decretal de officio Legati cap. 4.

miſſion to ſuffer the deſtruction of them, or any of them. *Themiſtocles* declared to the Athenians, and *Cato* to the Romans, that man could not uſurpe or preſcribe unto any thing which was due unto the divine Majeſty, neither could private men do the like unto the Common-wealth. The alienation of thoſe things are by the Law forbidden, *qua natura, jus gentium, vel mores civitatis commercio exuerunt, ut ſunt ſacra, religioſa, aut quorum commercium non ſit: præſcriptio longæ poſſeſſionis non concedi, in rebus ſanctis, ſacris vel publicis Populi Romani, nec in rebus Fiſcalibus vel Dominicis, quæ ſunt propria principis.* In the treaty between the King of Spains Commiſſioners and the Hollanders in the year 1607, it was often urged and not gainſaid, for ought appeareth, that the ſupream rights of Majeſty and Empire could not be gotten from the King of Spain by any grant or tranſaction between him and his Subjects, neither loſt by any preſcription or lapſe of time. And yet may a King paſſe by his grant, and loſe by preſcription ſome things of profit, and of his revenue, and other inferiour rights and Regalities according to the Laws and cuſtomes of ſeveral Kingdoms. And in ſome caſes preſcription doth ly in all Kingdoms againſt the King, or elſe controverſies would remain immortal. So likewiſe grants, alienations and contracts made by the King for juſt cauſes and in legal form, are, and ought to continue valid, leſt many inconveniences and much injuſtice ſhould follow, and the King be in the worſt condition of all men; *& ſit quaſi exul, qui eſt omnium præſul.* He is tyed by the Laws of nations and nature to obſerve juſt contracts, which, as the Doctors ſay, he cannot make void, and revoke *de plenitudine poteſtatis ſuæ.* The Lawyers affirm, that *vectigalia & alia emolumenta ex juriſdictione provenientia, alienari poſſunt, & in parte præſcribi poſſunt, firma manente juriſdictionis ſuæ ſuprema exercitatione apud ſe et ſucceſſores ſuos, ita ut ſit ſine diminutione authoritatis ſuprema & derogatione directi dominii Principis.** And although ſome of theſe Regalities ſeem to be reſerved, yet are they grantable and ſubject to preſcription, as *creare Tabelliones, monetas cudere, exactiones vectigalium aliquorum*, and ſome others, *quæ cùm ſint inter minora Regalia corporis, ſummique Imperii, & Patrimonii Regii integritatem non imminuunt: In his præſcriptio valeat contra*

L. 34. F. de contrab. empt. L. 6. de contrab. emp. F. L. 9. l. 45. de uſucap. L. 7. tit. 37. & 38. Cod.

Relationes Bandii & Meurſii.

Baldus.

Baldus.

* No Act of Parliament can bind the King from any prerogative which is ſole and inſeparable to his Perſon.

Peregrinus de jure fisci & alii. Chopin. de doman. Reg. Codex Fab. Sextinus de Regalibus. * *Tributa & alia publica functio seu collatio nullam temporis præscriptionem admittunt.* Cod. l. 6. de Præscript. 30. vel 40. annorum. Et generaliter res Fisci non usucapi. l. 2. Cod. communia de usucapi. Institut. de usucap. l. 18. ff. de usucap. tamen sunt aliqui casus ubi præscriptio locum tenet contra Fiscum per leges & constitutiones Imperiales. l. 4. l. 6. de Præscript. 30. & 40. annorum. Cod. l. ult. Cod de Fundis Rei privatæ. l ult. C. de Fundis Patrimon. caus. 16. quæst. 3. c. 16. de Tributis aliisque prensitationibus publicis nullo temporis spacio prædia redduntur immunia; non sic de alio jure publico, principali seu Fiscali & Feudali. Cujac. consultatio. 54.

contra fiscum. * *Census, tributa & dominium Principis, res sunt inalienabiles, & imperscriptibiles, quarum vindicatio nulla temporis præscriptione submoveatur.* His ancient and just tributes and customes, and his right of imposing moderate gabells and taxes, are not alienable, neither within the reach of prescription, as likewise the domaines of the Crown, called the Royal Dowry; for when these are taken away, he doth lose his peculiar and proper livelihood, and the ordinary means to support his estate; and the Common-wealth receiveth much detriment, when the King hath not wherewith to live of his own, but the people must be continually burthened with exorbitant and illegal Taxes and courses, used for raising of money, the most usual causes of discord between the King and the People, often producing Insurrections and Rebellion, and sometimes made use of by factious and discontented persons to justifie or colour their designs against their Soveraign. The Emperour *Vitellius* unto some men released his Tributes, to others he granted overlarge immunities, without care of posterity he mangled and maimed his Empire. The Common sort accepted these favours, the fools bought them with money, which wise men accounted void, as being such as could neither be given nor taken with the safety of the State.

Tacitus.

CHAP.

CHAP. IX.

Of the Act of Parliament wherein the King was to paſs away his power in the Militia; *And that other Act which was made for the continuation of the Parliament until both Houſes ſhould agree for the diſſolving thereof. Of fraud or force uſed towards the King or any other men, for the obtaining of any Charters, Patens, or Grants.*

BUt we cannot finde any grants of *Vitellius*, or of other Roman Emperours or Princes ſubject to more juſt exception, either in reſpect of the matter and things granted, or the means uſed for the obtaining of them, or the end and purpoſe for which they were obtained, then that act of Parliament, whereby the King was to paſs away his power of the *Militia*, and raiſing of moneys upon the People for maintenance of forces by land and ſea at the will of the Parliament, the ready way to out himſelf of all power of War and Peace, of arming or diſarming his own Subjects, or any others, upon what cauſe ſoever, contrary to the rights and ſafety of Monarchies, and to the Laws and Statutes of England, as hath been before declared. But this was, as the Pſalmiſt ſaith, *to ſtrengthen themſelves in their wickedneſs, and to worke their iniquity by a Law.* The King might as well have granted them jurisdiction over any City or County of his Kingdome independent as unto himſelfe, and exempt from his authority and the Laws of the Realm, and without appeal to his ſupream Court: and he might as well have paſſed away his peculiar right of pardoning offences, and deſpenſing with penal Statutes. The Doctors of the Civil and Canon Law ſay, that a King in what grant ſoever cannot *abdicare à ſe ſuperioritatem ſuam, & jus illud ſupremum, quod ſemper præſumitur reſervatum, nec concedere cenſetur totum hoc privativè quoad ſe & ſucceſſores ſuos: ita ut non poſſit alteri jurisdictionem dare aut poteſtatem, quin ei remanet major jurisdictio & poteſtas, quam fuerat tranſlata: neque tamen quocunque* Baldus Alexand. Angelus & alii.

Sixtinus de Regalib. lib. 1. cap. 5.

que modo Regalium conceſſio fiat, ipſius Imperatoris, aut alterius Regis ſuperior poteſtas ea conceſſione comprehenſa cenſetur, ſed potius major quam eſt conceſſa, illis reſervata & retenta ſit; neque poteſt à ſupremo Principe, licet velit, ita conceſſio fieri, ut ſuperior poteſtas in alium transferatur. The faireſt and the moſt ſpecious pretences, and the ſtrongeſt and moſt legal tyes and formalities make that which is evil in it ſelfe the moſt pernicious and abominable; *damnabilis eſt malitia quam titulus bonitatis accuſat:* this Statute therefore being ſuch and ſo qualified, and ſo deſtructive to that power wherewith Kings are intruſted by God, and inveſted by the fundamental Laws of their Kingdomes; and ſerving moſt properly to raiſe and continue diſcord between the King and his Subjects, cannot but appear to all men, to be as abſurd, as pernicious. And like this, was that other act, and of the ſame leaven and mould with that act of the MILITIA, which was made for the continuation of the Parliament, until both Houſes ſhould agree for the diſſolving of it. But they did not ſtay for that agreement; for the Parliament was diſſolved againſt their will, by the irruption of the ſoldiers. And yet before that, they did diſſolve it themſelves, although beſides their intention, when they deſerted the King and his authority, and acted contrary to their writ of ſummons, and to the rights of both King and People: But more apparently when they ſuppreſſed the Houſe of Peers, and ran away moſt part of them together with their ſpeaker unto the protection of the Army, and ſo became the Armies Parliament, under which power they ſtill afterwards did ſit and act, leaving the Parliament without any Lawful adjournment, *ſine die, ſine capite, ſine corpore.* This Law for continuation of the Parliament, ſo directly contrary to the inſtitution, and eſſence of Parliaments, and the undoubted right of Kings to call and diſſolve Parliaments, was another new and ſtrange Law; *Lex nova & inaudita,* as was ſaid of the Roman Law *Agraria,* from which great ſeditions took their firſt riſe, and from thoſe ſeditions Civil wars, which never were fully ended, until that Common-wealth was utterly deſtroyed by the uſurpation of *Julius Caſar.* It was a Law, *quæ ſumma miſcuit imis,* a Law, *unde jus vi obrutum erat.* For the iniquity of our two Statutes before mentioned, they may fitly

Salvianus.

Saluſt. Paterculus.

fitly in many reſpects be compared to this Law *Agraria*, which *Tiberius Gracchus* the Tribune of the People preferred to flatter the People, to continue himſelfe in his office, that he might be the more ſafe from the Nobility and rich men his enemies, & the better bring his deſignes to effect. This Law, being very plauſible to the Commons, *Julius Cæſar* revived, to aſſure the People unto him, and to obtain their compliance with his uſurpation. It was a law ſeditious in it ſelf, ſerving aptly to imbaſe and make contemptible the Majeſty of the Senate and Conſuls, but in reſpect of the meanes uſed to make it paſs with their votes, it was abominable: for tumults were raiſed on purpoſe, and ſuch violence was offered to one of the Conſuls for oppoſing it, that the Enſigns of office carried before him were broken, and a basket of duſt thrown upon his head, and two Tribunes and ſome others in his company were wounded: and ſoon after came to an end the Roman glory, and their liberty. Inſomuch as many of the wiſeſt, ſeeing the madneſs of the People, and their contempt of Laws and their former government, thought themſelves happy, if the Common-wealth was no worſe afflicted, then with the burthen of an abſolute Monarchy. It is not the retaining of ſome of the uſual form and ſolemnity, as was in the making our two Statutes, that maketh a binding law, if the principal and eſſential parts and properties of a Law be wanting. For a Law hath no force nor virtue, when the material and final cauſes and reaſons of a juſt Law do ceaſe and are determined, and the execution of that Law would prove injurious or abſurd. And ſo a Law or Grant whoſe foundation and ground is laid upon a fiction or preſumption of a fact, or thing which never had any exiſtence and being, hath naturally no force & efficacy, as having no conſent of the will, but onely under an implyed and ſuppoſed condition, *Qua reipſa non extitit, & ſic veritate facti deficiente, totum legis deficit fundamentum: quia hæc eſt obligatio quaſi ex falſa cauſa, quæ nulla eſt obligatio, cùm deficiat voluntas ejus; qui ſe obligavit cum aliquo præſuppoſito, deficiente veritate dicti præſuppoſiti: Jus ſuppoſititium lex improbat.* Moreover if a Law, although it had at firſt juſt cauſes and reaſons for making of it, which after fall off and ceaſe, doth loſe its force and vertue, what may we ſay of our two Statutes and ſome others made in

Plutarch in the lives of Cæſar and Pompey.

Medina. Felin & alii.

Ancharan. Decius & alii, & Deciſ. Rotæ Rom.

this long Parliament, which in lieu of juſt and legal cauſes and reaſons were fraudulent pretences and illuſions put upon the King to obtain his aſſent, and to abuſe the people, for the advancement of evil deſigns, and the ſtrengthening of a pernicious faction? In a ſtipulation or promiſe, although, for the making of it there was juſt cauſe, *ſed nunc nullam cauſam idoneam habere videtur, vel cauſa non ſecuta, aut finita eſt, datur contra petitorem doli mali exceptio; quia non refert, utrum ab initio ſine cauſa aliquid datum ſit, an cauſa propter quam datum ſit, ſecuta non ſit, vel ex poſt facto recederit ad injuſtam vel nullam cauſam, ita ut datum videatur ſine cauſa: In omnibus cauſis quæ jure non valuerunt, vel non habuerunt effectum, revocatur quod datum vel ſolutum erat.* All ſtipulations are in their nature, *ſtricti juris*, and therefore not eaſily made void; yet if one be bound contrary to his will by machination and practiſe, he may void ſuch ſtipulation. And ſo all other contracts grounded upon deceit are void or voidable, where there is *dolus ex propoſito, dolus dans cauſam contractui, vel ubi res ipſa in ſe dolum habeat.* And the Law doth ever provide, *ne quis ex dolo ſuo lucrum habeat. Exceptio doli accomodatur ei qui aliter obligatus eſt quam conveniſſet, licet alioquin ſubtilitate juris obſtrictus eſſet, nihilominus repellit agentem ex ſtipulatu, etiamſi nulla ſit ab iſto adhibita machinatio, dum tamen ipſa res in ſe dolum habeat.* And yet not every deceit, nor every fear will void promiſes, contracts and grants: as that fear is reputed ſufficient which may overcome a man indued with fortitude, ſo that deceit ſeemeth by law ſufficient which may deceive a prudent perſon, ſo as the fear or deceit were the immediate cauſe, without which the man would not have done the act. But how far this fear or deceit ſhall extend according to the quality, nature and condition of the perſons and other circumſtances; and whether deceit, errour and ignorance do more aboliſh the conſent of the will, then fear or violence, is to be left unto the Judges, as a queſtion of fact, and ſo the Interpreters of the Law agree, after much diverſity of opinions amongſt them. As in all grants and releaſes, fraud is alwayes preſumed to be excepted, ſo ſhall they not extend unto that which the parry granting or releaſing may juſtly be preſumed to have not had thought, either in *ſpecie* or in *genere*;

L. 2. F. de except. doli L. *penult. F. de condict. ſine cauſa. Cuiac. & alii.*

L. 54 F. de condict. in debit. l. 36. de verb. obl.

L. 36. F. de verb. obl.

non

non ad inopinata & incognita extenditur diſpoſitio, nec ultra ea pro quibus factum erat: ſo general words ſhall be reſtrained, *ad rationem & cauſam propter quam fuerunt prolata*, and ſo in caſe of exceſſive hurt and damage *per enormiſſimam læſionem, aut error aut ignorantia aut dolus ex reipſa præſumitur.* A ſentence and decree ſhall not bind, if it paſſed through bribery and corruption, *per ſordes & turpitudinem ipſo jure nulla eſt*, although the Law ſaith, *intereſt Reipublicæ non convelli rerum judicatarum authoritatem; quia rebus judicatis ſtat ſtatus Reipublicæ.* Neither ſhall a Judicial decree prejudice one under age, neither the Church if any of the legal ſolemnities injoyned by law are wanting, for *dolus reipſa præſumitur eſſe.* Or if ſuch decree be ſurreptitiouſly gotten, then no propriety or right doth paſs thereby from the Minor or Church, but ſtill they may have their action real or perſonal, *non tantum in perſonam ſed in rem ipſam. Pacta contra jus Reipublicæ non valent, & hoc ad Eccleſiam trahi debere, quæ in jure ſemper comparatur Reipublicæ, nam jus publicum, quod ad ſtatum rei Romanæ ſpectat, etiam in ſacris & ſacerdotibus conſiſtit.* The interpreters of the Law ſay, *Eccleſia, Reſpublica, & minores circumventi vel lapſi in integrum reſtituuntur; ergo & Princeps*; for above all, the law is moſt favourable unto the Prince. His Patents, Charters and Grants according to common intendment, and the uſual clauſe inſerted, are to proceed from him *ex mero motu, & certa ſcientia.* All his Grants and contracts, are *bonæ fidei*, rather then *ſtricti juris*, and ought alwayes to be interpreted, *ex bono & æquo.* He hath many ſingular priviledges by the Civil law, and by the Common law of England. He is not deprivable of remedy againſt undue forms; as he can do no wrong, ſo ſhall he receive no prejudice through the defects in Legal forms. The inſerting or addition of any words or clauſes prevail not againſt him, when there is cauſe to preſume, that he was ignorant or deceived. There ought not to be with any man, but there muſt not be with him a ſtriving, *ſevâ prærogativâ verborum contra juris ſententiam, nec rei geſtæ veritatem ulla ſcripturâ mutari*, as in the Roman law. If there are legal and ſtrong preſumptions *(præſumptiones juris & de jure, quæ pro liquida probatione habentur)* that his grant did not proceed from his certain knowledge and meer motion, but was ſurre-

Decif. Rot. Rom.
Farinacii.
Decif. Rot. Rom.
Lib. 2. Cod. de reſcind. vend.
Lib. 7. Cod. Quando provocare.
L. ſiquidem Cod. de Prædiis minorum.
Extravag. de reb. Eccl. non alienandis. l. 5. & penult.
F. de reb. eorum qui ſub Tut. l. 4. Cod. quib. ex cau. major. l. 35. F. de rejud.
Cuiac. l. 1. F. de juſt. & jur.
Baldus & alii.

surreptitiously gotten, no words prevail, but the more forceable they are, the more fraud they carry with them: *Ubi abundantior est Cautela, evidentior fraus præsumitur: & quod quis ita cautè facit, ne fraudem fecisse videatur, major & periculosior fraus ex eo præsumitur: Clausulæ & cautiones insolitæ, ipsum actum magis suspectum faciunt: licet abundans Cautela non nocet, tamen quod dubitationis causa tollenda videtur poni, si sit insolitum, suspicionem inducit, & contractum simulatum arguit.* Injustice, the more it hath of the shew of legality, the more mischief it worketh. That lye is the worst, saith *Quintilian*, which seemeth to come nearest unto the truth. *Nulla major pestis est humano generi & justitiæ, quam eorum, qui cùm maximè fallunt, id agunt ut boni viri esse videantur.* This clause of certain Knowledge, doth not work effectually, *nisi circa ea quæ Princeps præsumitur scire, prout sunt ea quæ in jure consistunt, secus circa ea quæ in facto consistunt, de quibus sæpe præsumitur ignorantia ejus.* Neither can that other forceable clause of meer motion hinder a just exception, and be a barr from making deceit appear, which deceit may proceed *vel ex re ipsa, vel ex parte impetrantis, quando ex suggestione ejus obtinetur. Et cum emanaverit ad supplicationem supplicantis, censetur Papa vel Rex aliquis se fundasse super narrata, & si narrata non verificantur, gratia, confirmatio, vel rescriptum corruit.* Yet notwithstanding a man may be said to grant of his own proper and meire motion, although he accepteth the petition of the party, when he is not moved to grant, only because the other desired it, but of a willingness also, and bounty in himselfe. In the Imperiall Law it doth often occur *nos amoventes quicquid surreptitia impetratio, furtiva deprecatio, vel potentia alicujus elicuit. Ubi literas impetrant à nobis per fraudem vel malitiam, veritate occultata, vel suggesta falsitate.* If those acts are void or voidable by Law, which are defective in respect of the form, or in respect of the indirect manner or means used for the obtaining them, as force, fraud, false suggestions, or concealing a truth necessary to be known: *ubi mendacium reperiatur, sive in facti, sive in tacendi fraude*, those acts also are undoubtedly void, in the matter and subject, which are *utilitati publicæ adversa, vel juri communi*; and such are those which are against the just and ancient rights of the

Baldus.

Baldus, Decius & alii.

Cicero offic. lib. 1.

Decis. Rotæ Rom. Farinacii. 656. pars 2.

Decis. Rotæ Rom Durandi.

Decretal. de rescriptis. c. 20

L. 2. & l. 6. Cod. tit. si contra jus vel utilitatem publicam.

Coveruvias var. resol. l. 1. c. 20. l 3. l. 1. Cod. de precib. Imp. l. ult. Cod. si contra jus vel util. pub. l.

the Crown, againſt the fundamentall Laws, and the juſt rights and liberties of the ſubjects, for ſuch are againſt the common peace and weal-publick. *Nec pactum, nec juſjurandum à jure communi remotum, ſervandum eſt: Juſjurandum contra vim & authoritatem juris, nullius eſt momenti.* But a Law is of greater concernment, then either the contracts of private men, or the grants and ordinary Charters of a Prince. If equity be wanting to a Law, the vigor and life of it is wanting: *Legum parens eſt aquitas: in omnibus, maximè in jure ſpectanda eſt aquitas.* Our Lawyers finde in their books, that when an act of Parliament, is againſt common reaſon, or common equity, or cannot be executed without doing wrong, the common Law doth controwl that act and doth adjudge it void, agreeable to that rule given by the Interpreters of the Civil and Canon Law, *ſtatutum potius interpretandum ut nihil operetur, quàm ut iniquitatem contineat.* And yet notwithſtanding all this that hath been ſaid, ſome of our Lawyers delivered their opinion, being required by the King, that this Statute for continuation of the Parliament during the pleaſure of both Houſes was not void in Law; although by that Law the King was almoſt laid aſide, or uſed but as a cypher, and little account made of his negative voyce in Parliament, in reſpect of their new uſurped power to make Ordinances; ſo as the Parliament was changed from being the great Councel of the King, and became as the Roman and Venetian Senate; and they abuſed that power alſo of ſiting during their pleaſure, and ſo made a forfeiture thereof, if it could have been lawfully granted unto them. Thus contrary to the intention of both King and People, and contrary to the reaſons on which their rights and liberties are grounded, and contrary to the fundamental Laws of the Kingdom, and contrary to the office and duty of thoſe elected members, and to the nature and quality of all delegated power and authority, Procurators, Deputies or Repreſentatives, became maſters of all, and perpetual Dictators, and did work all their iniquity by a Law.

L. 7. F. de Hiſt. l. 112. F de legatis. 1. l. 5. Cod. de legibus.

Cicero. l. 90. F. de regulis Juris.

There is another way of fraud uſed to circumvent Princes, which is to obſerve an opportunity offered them by occaſion of ſome neceſſities and ſtraits, into which Princes often fall. Many learned men affirme, that all bindings and tyes of Kings, al-

although by vertue of a Law, upon the onely advantage taken of their neceſſities and ſtraits in their affairs, maketh the breach of that Law juſtifiable, inasmuch as any conſtrained aſſent, is never reputed a Royal aſſent, neither a durable aſſent. Amongſt many examples there is one of our glorious King *Edward* the third, in or about the fifteenth year of his reign, who went roundly to worke in ſuch caſe, and voided certain things formerly granted by himſelfe in Parliament, alleadging that thoſe things by him granted were contrary to his oath, and the rights of his Crown, which he granted not of his free will, but that he diſſembled at that time, to avoid thoſe eminent dangers which would have enſued upon his denial. Yet may we not approve *Machiavils* doctrine, that Princes may without diſhonour break their faith, when the obſervation thereof turneth againſt themſelves, or the cauſe which urged them to promiſe doth ceaſe; albeit mans aſſent or denyal is feeble and defective, when he is ſurrounded with inextricable difficulties, and oppreſſed with violent perturbations, and then to take an advantage thereof, is neither fair nor firm: for when ſtrong and violent perturbations and affections have poſſeſſed the mind, all Laws allow them for juſt cauſes of qualifications of offences, and mitigation of puniſhment in moſt caſes: *Non eſt facile inter magna mala non deſipere, & quid mirum eſt, animos inter dolorem & metum oberraſſe?* They who ſeeke to hold Princes, or other men to the ſtrict obſervation of promiſes, drawn by the advantage taken of their neceſſities and diſtreſſe, can never have any ſure hold of ſuch promiſes, neither of their affections. It will never dye in the Romans hearts, but will alwayes be freſh in memory, whatſoever ſhame the yielding unto their preſent neceſſity ſhall brand them with. Princes have, or at leaſt they take unto themſelves a larger ſcope and latitude, then other men can, or may, when as the freedome of their will is ſtraightned by any coaction or neceſſity; and upon reaſon of State do they proceed, more then upon rules of Law, or axioms of Philoſophie, and may ſometimes do that juſtifiably, which private men may not, *non poteſt non nimium eſſe privatis, quod Principi ſatis eſt.* Howſoever Princes ſhall not be tyed, when other men are freed from thoſe ſtipulations, contracts and conditions, *quæ lædunt pietatem, exiſtimationem, & verecundiam*

Cap. 18. of his Prince.

Seneca.

Livius lib. 9.

Plin. Paneg. L. 10. F. de condit. Inſtit. L. 79. F. de Jure dot l. 63. F. de condit & demonſt.

eorum

eorum; & generaliter contra bonos mores sunt, quia nec talia facere posse, credendum est: Id possumus quod jure possumus: Paria sunt impossibilia & turpia. A Prince when he is injuried or damnified, may, as the Schoolmen say, in his defence, or in vindication of his reputation (which doth much support his authority) act in a different manner, and proceed to a higher measure and degree then private men; for the injuries done unto him, and the damages sustained by him, much differ from those of other mens, both in quality and extent: *Ut gravius peccatur in personam magis Deo conjunctam, sive ratio officii sive virtutis spectetur; sic quantò aliqua injuria in plures redundat, tantò gravior est, ut est ea quæ fit in Regem, qui gerit Personam totius multitudinis, & sic redundat in injuriam totius.* Aquinas. But Princes, as well as others, are obliged to the observation of their promises and contracts by natural equity: *Pacta conventa, naturali æquitate rata sunt, quæ non sunt dolo malo facta, nec contra leges.* Seneca. L. 1. l. 7. F. de Pactis. Baldus. Faith is expected more fully to be performed by Princes; *Exuberantior fides ab iis requiritur: variatio, & inconstantia in Principe maximè reprobatur; debet esse immobilis sicut lapis angularis, & sicut Polus in Cœlo.* And therefore it is most dishonourable in a Prince, *aliquem speciem juris fraudi imponere, aut fraudes & captiunculas miscere, syllabas & apices aucupari, quod leguleorum est*; for which cavillations and carping at words; two glorious Princes, *Ferdinand* of *Spain*, and *Charles* the fifth his Grand-son, did suffer in their reputation, and so did *Lewis* the twelfth King of *France*, *quod non Principibus sed leguleis dignas verborum ac pactorum interpretationes afferrent: notam infamiæ is incurrit, qui ea astutè interpretari voluerit.* Livius. Lipsius Cicero. Sleiden. 19. Nat. Comes 3. Guicciard. 5. Gentil. de jure belli Lib. 2. c. 4. l. 2. Cod de legibus. The Emperour *Justinian* gave amongst his Laws two good rules for Princes, the one concerning the observation of their own contracts, *Imperialibus contractibus vim legum obtinentibus*: the other for observing their Laws, *digna vox est Majestatis regnantis, Principem profiteri se legibus alligatum esse; de authoritate juris pendet nostra authoritas.* L. 4. Cod. de legib. For a Prince by breaking his faith, and not governing his People according to his Lawes draweth upon himself hatred or contempt, or both; either of them are most effectual means to rend in sunder the Pillars of his authority, and the sinnews of his Government, and when either of these have possessed the

Florus. minds of men, *novæ libertatis avidi, cupiditate libertatis incensi*, they are ſeldome removed by any art or induſtry; and then all his actions good or bad, ſhall have one and the ſame interpretation: *Inviſo ſemel Imperio, ſeu benè, ſeu malè facta premunt.* *Machiavil* doth boldly tell Princes, that the ſame hour they begin to loſe their State and Authority, when they begin to violate and undervalue the antient inſtitutions, Laws and Cuſtomes, under which they and their anceſtors have lived long and happily; *Imperii omnis vis in conſenſu obedientium eſt.*

Tacitus. Lib 3. c. 5. diſcur. upon Livie.

Livius lib. 2.

All Lawes Humane and Divine are againſt violent acquiſitions, except in a juſt war, how juſt ſoever the cauſe be. For in a lawful war there is *jus hoſtium & fas armorum*, and he who is taken priſoner in ſuch war is a lawfull captive, not he who is taken by Pirats, thieves, rebels, or in a civil war; *in civilibus diſſentionibus non ſunt jura captivitatum & Poſtlimiinii: Quæ rapta ſunt bello civili, dominis, ſi extent, reſtituenda ſunt, qui bello civili ſe non immiſcuerunt.* Things gotten by thieves, *latrocinio ſubrepta uſucapi non poſſe*, no title doth accrue unto him into whoſe hands ſoever they come: *non multum interſit quoad periculum animæ, an quis abſtulerit rem per vim, ac ſciens prudenſque rem retinuerit, per vim ablatam ab alio; quia interdictum unde vi, ſequitur quemcunque poſſeſſorem*, for, *malæ fidei emptor, in vitium venditoris ſuccedit: Poſſeſſioni violentæ inſiſtentes, vim continuo exercere dicuntur.* Time which weareth out all things, will not wipe out that impreſſion and canker, and raiſe a juſt title unto things gotten by robbery and rapine. *Perpetuo perſecutio rerum vi ablatarum, rei ſubreptæ æterna authoritas eſto:* And this in reſpect of a double obſtacle, *vitium in re ſeu ex re, & vitium ex perſona*, which cannot be purged, and a way opened to preſcription, untill that which was thus violently gotten, return again into the hand and poſſeſſion of the owner, or his lawful ſucceſſor. So odious doth the Law render violent taking, that if the thing periſh in the hand of him who committed the violence, by chance and without his fault, and that in probability it would have periſhed, if it had been returned to the owner again, yet the violent taker is ſtill liable, *etiamſi ſine culpa ejus amiſſa res ſit, æſtimationem tamen illius rei per interdictum*

Tacitus.

L. 24. F. de Captivis. Cuiac. ex Cod. Theod. ad c. ult. de reſcit. Spol. Decretal. l. 27. F. de Captivis. Cap. 11. Decretal. de Judiciis.

L. penult. C. de acquir. poſſ.

Lib. penul. F. de interdict. l. ult. F. de vi bon. rapt.

L. 24. F. de uſurp. & uſu cap.

L. 1. & 34. & l. 19. F. de vi & vi armata.

dictum restituere debeat, quia ex ipso tempore delicti plus quàm frustrator debitor constitutus est: periculum rei ad eum indistincte pertinet; licet involuntarium, si habeat suum ortum ex voluntario, censetur pro voluntario. Moreover he who keepeth one under unjust and illegal captivity, can gain nothing of him, who during that time can grant him nothing; for he who offereth violence to his Debtor, to get what is his due, loseth his debt, and falleth into the compass of the Law *Julia de vi* for his farther punishment: *Si quis rem violenter invaserit, si dominus sit, rem amittit, quam abstulit; sin aliena res erat; non solum eam reddit ei qui rapinam passus est, verum ipsius rei æstimationem. Si vinxeris hominem liberum, eum te possidere non puto, multò minùs per eum res ejus à te possidebuntur; neque enim natura rerum patitur, ut per eum aliquid possidere possumus, quem civiliter in meâ potestate non habeo.* He who hath cast a man in prison, *ut aliquid ei extorqueret, quicquid ob hanc causam factum est nullius est momenti: Timor vinculorum restitutionem parit: si quis dedit aliquid, vel se obligavit, ubi in furto, adulterio, vel alio flagitio deprehensus erat, timuit ille mortem vel vincula.* But those promises, contracts and transactions made in prison, between the Creditor and Debtor, cannot be said to be void or voidable by Law, as done out of fear, because he is detained in prison; for imprisonment is ordained for Debtors, and therefore the Debtor is presumed to draw it justly upon himself, and if he made a promise or contract out of fear, *hunc sibi metum ipse infert.* Promises and contracts made through fear of an unlawful restraint are void in law, which fear is not cleared and taken off, untill he be restored unto his full liberty, and the cause of his fear taken away; for until then, it is still presumed, that this fear had its influence upon all his actions, although they seemed voluntary: *Eadem causa metus manente, purgari per temporis intervallum metus non præsumitur, nec per ullos actus purgatur, nisi tales sint, ex quibus nulla alia probabilis præsumptio capi possit quam purgationis metus.* What is a just and probable fear, is a question of fact, rather then of Law, although questinos of fact oftentimes draw after them questions of Law. So as in this of fear, as in that other of fraud before mentioned, the

L. 12. F. quod metus.

L. 7. Cod. unde vi.

L. 23. F. de adq. poss.

L. 22. F. Quod metus.

Ut in l. 21. *in principio.* F. Quod metus

Decius ad reg. jur. 40 & sic alii.

Decis. Rota. Rom.

Judge is to determine, after due proofs and consideration had, of the quality of the persons, and other circumstances. The Law in general saith, that fear is *mentis trepidatio, instantis vel futuri periculi ob causam*; And that a just fear, is *timor majoris malitatis, ut timor mortis, vel cruciatus corporis*, and doth express few cases of a just fear. I find this to be one cause, when a man seeth or heareth armed men come towards him, and flyeth for fear, it is presumed he was expelled by force and arms, *si possessio fuit ab his armatis occupata*: but another Law saith, *sufficit terror armorum* to make a forcible ejection; *Is qui metu turbæ perterritus, si fugerit, videtur vi dejectus esse: Imo si homines armatos venientes extimuerit, & ita profugerit, licet nemo ingressus fuerit, vi dejectus videtur; quia in metu non consideratur eventus, sed justa causa timoris: & ii qui cœtum & concursum fecerunt, vel homines ad hoc accommodaverunt, tenentur de vi publicâ.*

L. 1. l. 5. F. Quod metus. l. 3. F. ex quibus caus. Maj.

L. 3 S. 7. F. de vi armata. Lib. 3. & 7 de usucap. L. 1. S. 29. F. de vi & vi arm. f. 33. S. 2. F de usucap. L. 29. S. ult. locati. L. 4. F. de vi publica.

All this may sufficiently serve to justify the King and his party in leaving White-Hal and the Parliament, after they had been often assayled by a tumultuous rout, having not power to suppresse them, and those that had, did incite them, and made their advantage by them, *qui crimen, cum potest emendare, non corrigit, ipse committit: & aque dignum esse pœnâ, qui ab alio admotâ vi, ad suum lucrum utitur, ac eum qui vim adhibet.* Insomuch as this clamorous and tumultuous rout, were like that seditious assembly at *Rome*, who required the Senate, rather in threatning, then by way of supplication, and stood about the *Curia*, as if they would be Judges or moderators of the Publick Councel, so as very few of the Senators could be induced to repair unto the Consuls, and many of the rest of them were afraid not only to come to the Senate house, but to adventure abroad into the market place and streets. These our tumultuous assemblies, and the abominable disorders and contempts by them committed, cannot be excused (if they had not been incouraged by many of the members of the Parliament) in saying it was the fact of the vulgar sort, and that *delicta vulgi, à Publica causa separari*; for their offence was not suddain, momentary, and unexpected; it had tract of time, continuation and iteration, whereby the fact of a few shall involve those in authority, and had power to suppress, punish

Causa 23. quæst. 8. cap. 12 Seneca.

Livius lib. 2.

Livius.

puniſh and prevent them. *Si non compeſcimus, aut non ulciſcimur, quod eſt delictum privatum, fieri poteſt publicum, & ſic non ſingulos tantum teneri, ſed univerſitatem illaqueari*, as ſay the Doctors of the Laws; for the knowledge, the will, yea the command of the ſuperior, or of the whole body, Corporation and colledge is preſumed, *quando delictum non eſt momentaneum, ſed ſucceſſivum, & delinquitur iterum atque iterum pluries, & palam.* Men in authority draw guilt upon themſelves, by omitting their duty in preventing and puniſhing offences, eſpecially publickly committed: *Qui non prohibet, jubet, & mandare videtur: qui poteſt prohibere, & patitur peccare, vires ſubminiſtrat audaciæ: Vox eſt in jure Canonico frequentiſſima, non curare ſcrupulo ſocietatis, & conſentionis occultæ qui manifeſto crimini deſit obviare.* One other cauſe of juſt fear declared by Law, is when the Maſter is compelled by popular tumults and acclamations, to ſet free his bondman: In this caſe the bondman could not obtain his freedome, which the law doth favour, although the Maſter did at that time ſeem willing, *Qui coactus à Populo manumiſerit ſervum ſuum, quamvis voluntatem ſuam accommodaverit, & mentitus ſit, tamen ſervus non erit liber, nam ex acclamatione Populi manumittere prohibetur. Vanæ Populi voces audiendæ non ſunt, nec vocibus eorum credi oportet, quando aut noxium crimine abſolvi, aut innocentem condemnari deſiderant: Populus docendus eſt, non ſequendus. Præſumitur de injuſta ejus electione, qui per clamorem & tumultum eſt electus.* Much more ought we to refrain the condemning of any man, by the acclamations of the People which did chiefly ſet forward the condemnation of our Saviour, and it may be, and hath often been (as in the caſe of the Earl of *Strafford* this Parliament) an occaſion of much wrong and injuſtice, with men in authority, void of fortitude as *Pilate* was. *Saul* was brought to ruine by his own ackowledgement, by tranſgreſſing the commandment of God, in fearing the People, and obeying their voice: But in evil times, good men to avoid a ſtorm, have been driven to a refuge more neceſſary then juſt, as was the caſe of *Aaron*, *qui erranti populo ad Idolum fabricandum, non conſenſit inductus, ſed ceſſit obtrectus.*

L. 60. F. *de reg. jur.*

Cuiac. ad Decretal. de Teſtib. c. 45.

L. 17. 5. *Qui et à quib.*

L. 12. *Cod de Pœnis.*

Diſtinctio. 62. & cauſa 5. quæſt. 4. cum glaſſa. & cauſa 8, quæſt. 1. c. 16. tit. 6. de Electionibus. c. 2. Decretal. Electio ad clamorem Populi non valet, attamen ad clamorem Populi nominatur aliqui pœna: Gloſ. ad dict. l. 8. quæſt. 1, c. 16.

1 Sam. 15. 24.

Aug. de Civit. Dei l. 14. c. 11.

CHAP.

Chap. X.

The Caſe of Subjects in Rebellion againſt their Soveraign, and the errour of thoſe that would draw more crimes within the compaſs of Treaſon then they ought; Of Acts made and paſt under the power of a Uſurper.

As the Kings cauſe is more favourable then other mens in divers reſpects, ſo is the condition of Subjects in Rebellion, or guilty of Treaſon, the worſt of all other Delinquents in all reſpects, for the Law ſaith, *Per mortem crimen eorum non extinguitur, ſed poſt mortem id crimen inſtaurari ſolet, & confiſcantur eorum ſubſtantia & bona; poſt contractum perduellionis crimen donationes factæ non valent.* Thoſe who are in Rebellion, *qui hoſtili animo adverſus Rempublicam vel Principem animati ſunt*, are greater enemies to their Countrey then Pirats who are reputed common enemies, and may be deſtroyed by any man, being put out of all protection by the Law of Nations, *ipſo jure diffidati ſunt*; for they being violators of all Lawes, can have no benefit by any Law; they have not *jura belli, captivitatis & Poſtliminii*, due unto juſt enemies: *licitum eſt navigia, bona, & res naufragatas eorum ſurripere, & ſic ab iis qui ſunt nobis aut Chriſtiani nominis inimici.* And ſo a notorious and declared Rebel ought not to have protection from any Prince, eſpecially from him who is in league with his Soveraign; for ſuch a Rebel is ſaid to be expoſed to the violence of all men, and he that doth kill ſuch a Rebel, it is preſumed he did it *ſe defendendo de illius rebellione.* But a Rebel as well as a Thief, if he maketh reſiſtance or defence, may be juſtifiably ſlain; *liceat occidere furem ſi telo ſe defendat. Talis rebellis in perſona ſua poteſt impunè occidi, & bona ejus occupantibus concedi: In reos Majeſtatis omnis homo miles eſt; quem lex aut conſuetudo habuerit pro ſacro, non erit capitale, ſiquis eum occiderit. Sic furem nocturnum impunè*

L. 7. Cod. ad leg. Jul. Majeſtatis L. ult. F. ad leg. jul. Majeſtatis. l. 15. & l. 31. F. de donationib.

L. ult. F. ad leg. Jul. Majeſtatis.

Baldus. l. 24. de Captiv.

l. 18. Cod. de Furtis.

Bartoli. & Peregrinus de jure Fiſci.

L. 7. F. Quod metus. l. 54. F. de Furtis.

Peregrin. de jure Fiſci.

Tertullianus.

Livius lib. 2.

L. 9. F. ad leg. Cornel. de Sicariis.

quis

quis occidat, ſi parcere ei ſine periculo ſuo non potuit. In former times a man outlawed for Felony, might have been put to death by any man, *nam lupinum caput gerit à die ut legationis ſuæ.* And yet regularly and by Law, *nec quenquam ſceleſtum & indemnatum impune occidi:* but in ſome few caſes, the Law giveth the ſword into a private hand, eſpecially to ſuppreſs and deſtroy notorious Rebells, if they make reſiſtance, as likewiſe publick and notorious Robbers and Invaders, and ſuch as run from their Colours and Captains in time of War. *cunctis adverſus latrones publicos, deſertoréſque militiæ, jus exercendæ publicæ ultionis pro quiete communi indultum eſt, ut non modo defendendi ſe, ſed ulciſcendi cauſa propter publicam utilitatem: Eccleſia violentos laicos coercendo non dicitur contra legem agere, ſed legi ſubſidium præſtare.*

Hoveden in H. 2.

Auguſtin. nec poteſt privatus agere vicem poteſtatis alicujus. Auguſt.

L. 2. Cod. *quando liceat unicuique.* l. 2. Cod. *de deſertorib. Faber ſemeſt.*

Cap. 2. *de Privilegiis in Decret.*

The reaſon which doth juſtify this irregularity in proceeding againſt ſuch malefactors, is given by *Cicero, quia in tanta perturbatione rerum temporibus potius parere quam moribus,* and the Law agreeth with it alſo, *quia latro manifeſtus vel ſeditio prærupta, factioque cruenta moram non recipiant.* Thoſe who are in rebellion againſt their Soveraigne, are in another reſpect in a worſe condition then all other delinquents, for all their tranſactions and agreements made with their Prince, during the time they are in armes, are void, and ſo it was declared to *Henry* the forth of *France* by men of great prudence and learning, and the like was ſaid of the Hollanders ſome years before: For what Peace and tranſaction is that, ſaith *Cicero*, by which nothing is granted unto him, with whom the Peace of tranſaction is made? *Tranſactio, nullo dato, vel accepto, vel retento, fieri nunquam poſſit.* If the King and Common-wealth recover again their former eſtate, after a rebellion, although upon hard conditions, yet the Kings condition and thoſe in rebellion will prove afterwards very different and unequal, for whatſoever they got by armes, they loſe in the time of Peace, *perit illis, & Regi accreſcit, ejusque potiorem eventu conditionem eſſe, qui jure potior eſt,* as the Marſhal *Shomberge* ſaid unto *Henry* the forth of France, when he perſwaded him to make Peace with his Rebels, almoſt upon any conditions, *quia Princeps ex hoſte fit dominus*; and this cauſeth thoſe in rebellion to be ſo unwilling

L. 6 & 9. F. *de injuſto rupto. Teſtamento.*

Thuanus.

Ayala de jure bel.

L. 28. Cod. *de Tranſ.*

Thuan. lib. 105

ing to ſubmit, or truſt unto any accord, or aſſurance given them. The old ſaying doth ſtick in their minds, *he who draweth his ſword againſt his Soveraign muſt fling away the ſcabbard:* Although theſe agreements and tranſactions with thoſe in rebellion are void, but upon condition they firſt ſubmit, and return to their former obedience, *qui pacem petunt, inermes poſtulare, & de pace agere debent*, was the courſe holden by the Romans with thoſe who were not their ſubjects: *Hoſtibus non aliter pacem concedebant Romani, quam ſi armis poſitis eam petant, ſin autem pugnantes eam poſtulent, victoriâ pax, non pactione parienda eſt.* But this Roman magnanimity is loſt in this latter age, and Princes are neceſſitated oftentimes to wave much of their right, and to treat otherwiſe with thoſe in rebellion, for the obtaining of Peace, the moſt ineſtimable bleſſing upon a nation, and ſo neceſſary, that *Cicero* ſaith, a moſt unequall and unjuſt Peace is to be preferred before the moſt juſt war: Princes therefore ought rather to regard what they ought to do, for the good of themſelves and their People, then what they deſerve to ſuffer who offend: and he ſeemeth to do moſt wiſely, who ſetteth revenge in the laſt place, and taketh it in hand when all things are made ſure. It was obſerved of *Charles* the ſeventh of France who had ſharp war with the Engliſh and with his own ſubjects almoſt at one time, that his clemency and his endeavours to obtain Peace did not cauſe him to neglect juſt and neceſſary ſeverity, neither by immoderate and unſeaſonable revenge, which is rather a waſting then correcting, did he diſſolve the bonds and cut off the hope of reconciliation and unity, which would keep the wounds continually bleeding and feſtering, and cauſe new maladies to increaſe and multiply. *Multo felicius eſt & laudabilius, ſuis aliquando etiam immeritis ignoſcere, quam in ſuos meritò vindicari.* It is obſerved that *Hannibal* was cruell, and *Scipio* his adverſary was full of Clemency, yet each of them accompliſhed their deſignes, although they took a contrary courſe to each other. But men eaſily ſlip often into a defect and danger, by the uſe of cruelty or clemency, if it be not corrected by an extraordinary vertue, and conducted with exquiſite prudence. It is often obſerved that by treating with rebels, *quorum arrogantiam patientiâ & mollitiâ vincire arbitramur, ferociores reddamus, & priorem ſe-*

Livius.

Cicero.

French Invent.

Salvianus.

Machiavil. diſc. lib 3. c. 21. & 22.

Ayala de jure bel. lib. 2. c. 7.

revdo

rendo injuriam, invitas novam. Cupiditas iſtorum hominum, aliquid tradendo iis, non reſtringitur, ſed inflammatur; & quicquid conceſſeris initio, ad ulteriùs penetrandum ſit gradus. I cannot let paſs the error of thoſe who are too quick in charging men with treaſon; ſome out of indiſcretion, ſome out of a deſire of revenge, or to advance ſome deſignes by taking him away that is an obſtacle; ſome guided by the votes in Parliament, will have all men guilty of treaſon (as far forth as they themſelves who are in rebellion) for giving the King ill Counſel as they pretend, or for executing their authority civil or military in an exorbitant and illegal courſe, and ſo make theſe to be enemies of the Common-wealth, deſtroyers of the fundamental Laws, and liberties of the People, and raiſers of war againſt the King and the People. Although ſuch Counſellors and Miniſters may be in part guilty of ſome of this, and therefore deſerve ſevere puniſhment, yet not the puniſhment due for high treaſon and rebellion. Buchanan. Scot. Hiſt.

To take in all theſe crimes into the Crime of high treaſon would cauſe a boundleſs and indefinite definition and deſcription of high treaſon, and would appear contrary to the underſtanding of the Interpreters of the Laws, and to the intention of all Law-givers, and confound the wits of the beſt Logicians to make it probable. This doctrine would often hinder the endeavours of the beſt and moſt able Counſellors and Miniſters, to the great prejudice of the Prince and State, in making them timorous, and ever uncertain what to advice or act. And this were alſo to make him guilty of treaſon, who reſiſteth by force and armes the execution of any judgment and decree of a Court of Juſtice, which would be very abſurd: *Non omnis reſiſtentia armis facta adverſus Judiciarii decreti executionem, nec cum cives inter ſe tumultuantur, & ſit tantum partium & factionum certamen, dicitur crimen perduellionis & læſæ majeſtatis, ſed ubi aliqui deficiunt ab his quorum ſub Imperio ſunt; vel cum quid contra ſalutem & majeſtatem Imperii machinatur, & in exitium Reipublicæ contenditur. Inſpiciendum ſit quid agitur principaliter: voluntas & propoſitum diſtinguunt maleficia. Statutum de turbante Pacem, intelligitur de eo qui actum ſimpliciter facit ad turbandam Pacem, non ſi ex actu turbatio pacis ſequitur, dicunt Doctores.* It is the will and the purpoſe that L. 5. F. de Citia. pit. minut. L. 21. F de Capt. & Poſtlim Lib. 1. F ad leg. Jul. Majeſtatis.

I. doth

doth diſtinguiſh offences, not the act onely, or the event: *fraudis interpretatio ſemper in jure civili non ex eventu duntaxat, ſed ex conſilio quoque deſideratur: fraudem, eventum habuiſſe, neceſſe eſt, & conſilium præceſſiſſe fraudem.* We may not imitate thoſe Emperours who did bring into the compaſs of Treaſon what they liſt, and were therefore noted with infamy: *addito crimine Majeſtatis, quod tùm omnium accuſationum complementum erat; cuncta quæſtione Majeſtatis exercita: Erat unicum crimen eorum, qui crimine vacabant. Sed crimen Majeſtatis non à Judicibus in occaſionem, ob principis Majeſtatem habendum eſſe, ſed in veritate, non arripienda quævis occaſio ad adulandum Principem, niſi revera quis reus ſit.** Although the agreements and tranſactions made between a Prince and his Subjects in arms againſt him are void in Law, yet for the peace and welfare of the people, which is the ſupream Law, they are often confirmed and continue in force; ſo for the ſame reaſon, divers Acts and Ordinances made by and under a Uſurped power are obſerved and continued. Thoſe judicial Acts in Courts of Judicature in private mens Cauſes are held valid, after the Tyranny is removed, and the Common-wealth reduced into the former eſtate, and this is ſo, *potius ex bono & æquo, quam conceſſo jure, quia publicè intereſt rerum judicatarum, non convelli authoritatem; ſtatus Reipublicæ rebus judicatis maximè continetur:* for if the judicial Acts ſhould be diſannulled, peace would alwayes be diſturbed, and the common right of men deſtroyed. Therefore in many caſes, neither the perſonal defects, neither the want of a lawful calling in the Miniſter, Judge or Magiſtrate, ſhall prejudice mens rights, and deprive others of the benefit of their uſurped actions and authority. *Epiſcopus licet excommunicatus, ſi non fuerit declaratus excommunicatus, & pro tali habitus, geſta ab eo ſuſtinentur. Qui ab hæreticis baptizati eſſent in nomine Trinitatis, Catholici non rebaptizarent. Placuit Eccleſiæ Catholicæ, dicit Auguſtinus, ne in ipſis hæreticis baptiſma commune reſcindere: Effectus Sacramentales non excluduntur, propter culpam conferentis Sacramentum, ubi ignoranter vel ex neceſſitate, vel in forma Eccleſiæ recipi-*

Papinian. lib. 78. 79. De reg jur.

Tacitus.

Plinius.

L. 7 F. ad leg. Jul. Majeſtatis.

* Paulus ſentent. lib. 5. cap. 29. Cujac: Legitimi Principes ſubditis ut liberis non ut ſervis imperant: non ex terrore aut crimin bus Majeſtatis, reverentiam nomini meo adquiri volo, dicebat Imperator Tiberius.

L. 207. F. de reg. jur.

L. 65 & 2. ad Sc. Trebel.

Cicero.

L. 25. F de ſtatu hom.

Deciſ. Rotæ Rom. Farinacii & Gloſſa ad cau. 9 quæſt. 1. & ad cauſ. 1. quæſt. 1. c. 57.

Cuiac. paratit. Ne ſanctum Bapt. iteretur Cod.

Aquinas & alii.

*tur.** There are many acts of neceſſity held in force, although done contrary to thoſe formalities, and to the ſtrictneſs by poſitive Laws preſcribed, and the acts allowed, although the perſons are by Law diſabled who did act. *Clodius* was contrary to the Roman law made a Tribune; and *Barbarius* a bond-man, contrary to the Law, and to the intention of all, through ignorance of his condition, was made Prætor, yet the acts done by virtue of their office were held firm, *propter utilitatem eorum qui apud eos egerunt, tamen aliud ſit Prætorem eſſe, aliud Prætura fungi: non fuit Barbarius ita factus aut liber, aut Prætor, ſed acta apud eum confirmantur, propter utilitatem aut quietis cauſam.* Common errour although it doth not create or confirm right, yet doth it often give force and virtue to the actions of thoſe men who are ſolemnly, although erroneouſly elected for the preſervation of peace and mens rights: Much is tolerated of common and publick errour in favour of the Supream authority and common good, and the right of particular men; *ita ut tria concurrant, communis error, Superioris authoritas, publica utilitas*: Our Saviour did bid them obſerve and do as the Scribes and Phariſees required of them, who, he ſaid, *did ſit in Moſes chair*, for the lawful Prieſts and Levites were not then in being. But it was not the common errour, ſay the Interpreters of the Law, that made this *Barbarius* a bond-ſlave a Prætor: *non error ſimplex, nec publica utilitas ſimplex, ſed voluntas, quia à populo creatus erat, qui etiam ſervo eum honorem dare poterat. Communis error præſtat cauſam validitati actus, & excuſat à pœnâ: & authoritas ſuperioris licet erretur in jure, tamen cauſat bonam fidem: error non dat juriſdictionem, nec facit jus, licet juſtam excuſationis cauſam præbeat.* So favourable to private and innocent men were the *Athenians*, that they paid them the monies which the Tyrants had borrowed of them upon the publick faith, after they had expelled thoſe Tyrants and reduced the State. Thus when the King of *Naples* fled, and left his Kingdome to the French King *Charles* the eighth, who had compelled the Treaſurers and others debters, to the King of *Naples*, to pay

* Excommunicatio, licet privat facultate eligendi tam activa quàm paſſiva, & ſuſpendit ab officio & beneficio, tamen ſi excommunicatus habet officium publicum, valebit quod per illud faciet ratione & virtute ejus quouſque toleratur. Navarr in Manual.

L. 3. F. de offic. Prat.

Cicero.

Baldus.

Mat. 23.

Deciſ. Rota Rom Farinacii

L. 2 F. de Judiciis.

pay unto him or to his ſoldiers all thoſe monies due unto the King of *Naples*; it was adjudged by the ſupream Court of *Naples*, that the King of *Naples* being returned and repoſſeſſed ſhould allow of it and diſcharge them: *ſi Quæſtores regni, in belli civilis ardore, aut urgente tyrannide, aut legitimis hoſtibus invadentibus, pecuniam publicam numerare coguntur, illud acceptoferre Reſpub. debeat.*

A ſtil. deciſ. Neapol. Bodin de Repub. lib. 2. c 5. Bartolus de Tyranno

But as for thoſe acts of the publick intereſt, and are *publici juris*, they are for the moſt part of them reputed void, being made and done by and under a tyrannical and uſurped power; as the raiſing of taxes and impoſitions, the granting of Patents and Charters of Crown-lands, and offices and honours, the making of Laws and ordinances, eſpecially in derogation of the ancient Laws and cuſtomes. *Irrita ſunt ordinationes, beneficiorum collationes, & Eccleſiaſticarum rerum alienationes ab Octaviano & Guidone Hæreſiarchis factas: illos vero qui juramentum ſponte de tenendo Schiſmate præſtiterunt, à ſacris ordinibus & dignitatibus manere ſuſpenſos decernimus.** The Canons and decrees made during that great Schiſme in the Church, when there were three Popes at one time, immediatly before the election of *Martin* the fifth, were made void by the Councel of *Conſtance*, *niſi ad fidem & bonos mores pertinerent*: but ſome other acts and decrees of thoſe three Popes Competitors were allowed and ratified, for preſervation of the Peace of the Church, *quod jure hactenus ambiguo, frandi cuiquam eſſe, non conveniret*. Our acts of Parliament in the firſt of *Edward* the fourth, declared all mens private acts ſaved, &c. excepting thoſe who claimed by grants and patents of *Henry* the fourth, *Henry* the fifth, and *Henry* the ſixth. And the like voidance declared of thoſe grants and patents of things belonging to the Crown made by *Richard* the third, called Kings in fact and not in right. So alſo all letters patents made by the pretended Queen *Jane* were declared void in the firſt of Queen *Mary*, but the obligations, contracts and convayances between private perſons, although dated under her name and uſurped ſtile, were allowed. We have a late preſident in France in the time of *Henry* the fourth, to the ſame effect. When thoſe of the league made war againſt him, and uſurping his Regal authority, made many grants, patents and alienations to the prejudice

Tit. de ſchiſmat. c 1. Decretal. *Irrita ſunt omnia facta à tali hæretico qualis erat Novatianus, nemini ſuccedens, à ſeipſo incipiens, à ſeipſo ordinatus, Cathedram ſibi conſtituens, & Primatum aſſumens.*

Divus Cyprianus, Epiſt. 6. lib. 1.

Platina. Paul. Æmilius.

Thuanus.

dice of his crown and dignity, they were declared void, but not the judgments given in Courts of Juſtice for particular mens intereſt, neither the acts and aſſurances paſſed between private perſons, although they were made by and under that uſurped authority, name and ſtile. *Quæ ſunt publici juris & Coronæ, ſeparatam habent à jure privato cauſam & rationem. Quæ tempore Tyrannidis innovata ſunt, penitùs antiquata, caſſata & reciſa ſunt*; And many Conſtitutions Imperial are extant of *Juſtinian*, declaring to be void ſuch acts as paſſed under the power of Tyrants and Barbarians, as thoſe gifts and alienations under the Tyrant *Totilonus*. But without any declaration, if a City be deſtroyed by a Tyrant, it is ſaid by the Doctors of Law, to continue in being, by intendment of law, *juris intellectu, & ſi reſtauretur, jura & privilegia quæ durabant in habitu, ad actum ipſo jure reducuntur*: As a Captive taken in war, when he is redeemed and returned home, he ſhall be in the ſame eſtate and condition, as he was before his captivity; *jure Poſtliminii in omnem cauſam ſuam reſidet, & veniet, in qua futurus eſſet, ſi captus non fuiſſet.* A Tyrant and uſurper doth preſerve the rights of the juſt owners (as it is affirmed by the Lawyers, by his being in poſſeſſion and uſe of them) from the preſcription of others; *quia retinetur jus alterius per malæ fidei poſſeſſorem.** A neighbour City cannot preſcribe againſt another City during the time it is held under captivity and Tyranny. In time of Tyranny in the Common-wealth, or of Schiſm in the Church preſcription doth not run againſt any man: *Tempore ſchiſmatis non currit præſcriptio; tempus Tyrannidis eſt tempus ſchiſmatis, quia ſcindit communionem: Non currere præſcriptionem quamdiu Eccleſia erat viduata, vel ubi præerat Epiſcopus Donatiſta, vel quo tempore hoſtes iis locis incubuerunt quibus Eccleſiæ conſtitutæ ſunt; ſi non fuerit his quorum intereſt eo tempore interrum pendæ præſcriptionis bona copia.* And ſo in time of a great War and Invaſion, or of a raging Peſtilence, prejudice doth not

Bartolus & alii. Bald. & Gaylus in obſerv. Imperial. Comb. Cuiacius.

L. 6. F. de captivis.

L. 12. F. quemad. ſervitutes.

* Bartolus & Decretal. de Præſcript. c. 1. & c. 14. l. 16. Cod. de ſac. Eccleſ. Novel. Valent. de trigint. ann. præſcript. Nec Afris, nec Hiſpanis imputatur tempus quo Vandali eorum prædia poſſiderunt. Procop. de bello Vand. Cuiac. paratit. de Præſcript. 30. vel 40. annorum. Tempore boſtilitatis non currit præſcriptio. c. 10. Decretal. de Præſcript. Nec ubi Paganorum vel incredulorum furor in cauſa eſt: cauſa 16. quæſt. 3. c. 13. & 14. Sic ſi Epiſcopus fuerit Hæreticus, non currit Eccleſiæ præſcriptio, quia tunc Eccleſia quaſi vacare intelligitur. Gloſſa. ad Decretal. cap. 1. De præſcript.

not accrew through lapſe of time; during theſe times of Gods wrath, *non valenti agere non currit præſcriptio:* Neither in ſuch times the omiſſion of diverſe legal Solemnities and formalities, injoyned by poſitive Lawes for performance of ſundry acts, ſhall cauſe prejudice unto men: For all Lawes as well as promiſes and obligations, have this exception either expreſſed or implied, *de vi majori, ſeu de vi divina, cui reſiſti non poteſt:* If this be the proper and immediate cauſe which did hinder the performance of the act or office, it is a juſt impediment, otherwiſe, *impedimentum non excuſat, niſi tale ſit, quod removeri minimè potuit, & quod cauſa ſuit immediata, propter quam minimè præſtitum fuerit, quod præſtare debebat.* Moreover, *Cicero* ſaith, that thoſe laws and publick acts of State which paſſed under the tyrannical proſcriptions and cruel combuſtions raiſed by *Sylla*, as likewiſe thoſe acts done after, when *Julius Cæſar* uſurped, were all void in law. Yet *Quintilian* ſaith, that *Cicero* was of opinion, that ſome acts and ordinances made by *Sylla*, ought to be obſerved, *quia ita illis Legibus ſtatum Reipublicæ contineri, ut his diſſolutis Reſpublica ipſa ſtare non potuit.* For the endeavour to recover thoſe goods which *Sylla* did confiſcate, and were paſſed from man to man, made a diſturbance of the peace of the Common-wealth: for ſuch was the Courſe of the time, that thoſe goods and lands thus taken by him, *quamvis malè capta, jure tamen* ſaith *Florus*; *& eorum repetitionem non eſſe, licet malè capta, quia expedit Reipub. ſedata & compoſita, ut vulnera reſcindantur.* Such were the Corruptions in that broken State by their ſeditions and Civil war, that what did paſs for law, was not juſt: *Eſt juſtum aliquid legale, ſeu legitimum, quod non ſit juſtum naturale, ſeu reale: & licet nullum ſit æquum, quod non ſit bonum, benè tamen reperitur bonum utile, quod non ſit æquum: Plura ſunt in jure quæ habentur bona, licet non æqua: æquitate derogatur propter publicam utilitatem, ob bonum publici Status; quamquam aliqui dicunt, omne utile publico, id etiam ſit æquum: ſed propriè jus eſt ars boni & æqui, quia de juſtitiæ fonte manavit, & juſtum eſt objectum juſtitiæ: ſed à ratione juris æquitatis benignitas diſtinguitur; jus ab æquitate, bonum & æquum à juris ſcripti ratione.* As we find amongſt the Laws of Nations ſome that are not drawn from that which is properly equal

Deciſ. Rot. Rom.

Probus de bello civili adverſus Lepidum.

Faber ad reg. jur. 90 l. 1 F. de Uſucapion.

L. 1. F. de Juſt. & jur. Aquinas. Faber. ad reg. jur 90.

equal and juſt, *ſed uſu exigente & humanis neceſſitatibus, jura quædam agentibus conſtituta ſunt.* The like is to be ſaid of ſome particular Lawes made in all ages in diverſe Countreys and States, which are not grounded upon that which is ſimply and properly juſt and equal, but rather contrary, and for that reaſon, *uſu exigente, & humanis neceſſitatibus.* *Inſtitut. de Juſt. & jure.*

CHAP. XI.

Againſt any power pretended to depoſe Princes; Of the Allegiance of the Subjects; Of the oath of the King; and of his Coronation: Of ſtrangers joyning in Arms with ſubjects in Rebellion againſt their Soveraign; Of oathes and ingagements made to Tyrants and Uſurpers.

I Come now from their ſeditious practiſes, which I leave to their repentance, unto the relation of ſome of their pernicious Principles, which ſeem to be their Fundamentals. To relate all thoſe they ſometime do mention, if it were poſſible, yet were it to little purpoſe; Errours are prone to multiplication; one begetteth another. They affirm boldly that *if a King perform not his duty, his Subjects may compell him to it; and that they are bound to obey him no longer, then he doth govern according to his Lawes. That the People may depoſe him, from whom he hath his power*; and ſuch like.

The People who are a Party muſt be the ſole Judges, Witneſſes and Accuſers. And they would have it granted, that Kings hold their Crowns but conditionally, and generally from the election of the People. If theſe be not granted, their cauſe will fall to the ground, for they want proof to ſupport it. The duty we owe to our Soveraign, to our Parents, to our wives, and which the vaſſal oweth to his Lord, which is the weakeſt of theſe, are neither of them conditional, upon performance on their part. If this doctrine ſhould be received,

all

all the world would fall into confusion. Mutual and correlative duties ought not thus easily and perniciously to be dissolved. It is against Christian Doctrine to requite evil with evil; neither doth the Lawes allow (as it doth in some cases) Retaliations, Compensations, or Relaxations of such nature. *Cicero* saith, *there are duties to be performed toward some persons, from whom we have received injuries.* This doctrine were as ill for the Subjects as for the Prince, if they breake the bonds of their duty to him, and he thereupon should put them out of his protection, and shew himselfe a woolfe, and not a shepherd, and afford them neither protection, Justice, nor mercy, unto all which he is bound by his duty to God and his People. The Doctors of the Laws are much perplexed in debating these two Rules in Law, the one is, that *in vain he requireth the performance of a promise or contract, to whom he refuseth the performance of that which he ought on his part to performe:* the other is, *that a man is not bound to performe his oath, if that be not performed to him, in consideration whereof he did swear*: and unto these rules they assigne diverse exceptions and limitations; one is, that regularly, *ubi contractus est perfectus, & obligatio nascitur ultro citróque, non rescinditur propter inobedientiam alterius partis; & quod in contractibus innominatis non licet agere ad resolutionem contractus data contraventione unius partis, sed vel ad implementum contractus, vel ad interesse:* The not performance of one party, doth not make void the contract, but the Law giveth other remedies to the party damnifyed: for the Law doth not favour nullifications, and requireth in cases doubtful, such interpretation, as is *rei gerendæ aptior, ut actus de quo agitur valeat, potius quam pereat*; Although in divers promises and transactions, and in leagues and truces (yet this of truces is much controverted) the breach of one party is holden to be a discharge of the other from the whole obligation, upon this reason, * *quia singula Capita conventionis insunt conventioni, per modum mutuæ contemplationis, & correspectivè posita sunt, nec debet contractus clandicare ex una parte, ex uno latere: & fidem frangenti, fidem non esse servandam: quod dictum referendum esse ad unam eandemque conventionem, & ad ea quæ una eademque sponsione comprehensa sunt, & in promissionibus quarum*

L. incivile 12 Cod. de rei vind. l. non idcirco F. De contrab. empt. Bartol. P. decastro, & alii.

* *Accursius Alexander, Alciat, & alii vox ell juris et legum, frangi posse fidem ei qui fregerat prius fidem, qualemcunque fidem, nudam vel juratam.* Cujacius ad Decretal. de jure jurando. cap. 3 & c. 29.

rum altera alterius causa facta est, cum connexorum sit unum idemque judicium; sed secus est in diversis & separatis But notwithstanding all these distinctions and limitations in contracts and obligations Civil, all agree that in those duties which are mutual by the Laws of God and nature, as between the Father and the Son, the Husband and the Wife, the Lord and his Vassal, the Prince and his Subjects, the breach of duty in the one, is no discharge unto the other. Those have little regard of the breach of Paternal, Filial, or Matrimonial duties, who regard not their duty to their Soveraign. Against the Father, against the Husband, against the Lord and against all others, the Laws provide remedies for injuries, *ne sui quisque doloris vindex sit*, but the King is exempted from the coercive power of Lawes, although he is obliged to do right unto all men. When the Israelites desired a King, God commanded *Samuel* to shew unto them what hard and unjust pressures might fall unto them, from some of their Kings, lest peradventure in being not forewarned, they should murmure against God, who notwithstanding they were his selected people, yet he gave them no licence in any case to depose, chastise, or disobey evil Kings. For by the same decree of God, evil Kings are set over us, by which the authority of all Kings is established: *Bonos Principes voto expectare, qualescunque tolerare*, was the saying of a wise Heathen. Hereupon it is very aptly and wittily feigned, that when certain people desired of *Apollo*, to be resolved whether it were lawful to kill a Prince a Tyrant, he with great indignation rejected their question, in respect the people were incompetent judges, and not capable to discern between a King and a Tyrant: and in respect of their ignorance, they alwayes gave great advantage unto those who were ambitious, seditious, and lovers of novelties, or in desperate condition and estate, with their pencel or false pretences, and with colours of Hypocrisie, to paint Tyrants for lawful Princes, as well as Princes for Tyrants, whereby the world would be filled with bloodshed, and execrable confusions, and so *Apollo* sent them away with this admonition, *bonos Principes voto expetere, qualescunque tolerare*. *David* said, *against thee*, thee *onely have I sinned*; not but that he sinned also against men: and no excuse, no prerogative, no

Quintilian.

1 Samuel 8.

Calvin. InBit. Tacitus.

Regnalio di Parnaso.

acceptation of persons at Gods Tribunal, although in the quality of a King, he was exempted from any Judgement-seat of men; for *David* being a King, saith Saint *Ambrose*, was therefore not under the coercive power of humane lawes, *quia Reges liberi sunt à vinculis delictorum*; they are freed from the bonds of their offences, and are not called to punishments inflicted by Lawes, saith he, *quia tuti sunt Imperii potestate*, they are safe by the power and virtue of Empire. The Interpreters of the Civil and Canon Lawes, in explaining that in the Imperial Law, *legibus soluti sumus, legibus tamen vivimus*, do say, that Kings are freed from the coercive power of Laws, but not from the directive, *quia nihil magis proprium Imperii, quàm legibus vivere: Et qui leges facit pari Majestate legibus obtemperare debet. Non posse quemquam qui minoris est authoritatis, eum qui majoris potestatis est judiciis suis addicere, aut propriis definitionibus subjugare, quia prima sedes non judicabitur à quoquam nisi à Deo. Nec potest ipse hac in parte præjudicium ullum successoribus suis generare, pari potestate imo eâdem post eum functuris, cùm non habet par in parem imperium.* The ten Tribes which fell from their King *Rehoboam*, and chose *Jeroboam*, we find were justly condemned for their Rebellion, because they perverted the order, and violated the power established by God in falling from the house of *David*. The Prophet sheweth what they were, *Ephraim compasseth me with lyes, and the house of Israel with deceit, but* JUDAH *ruleth yet with God, and is faithful.* In this Tribe of *Judah* which remained, and kept the pure service of God, there remained also the lawful Government in the progeny of *David*; and all the other Tribes which revolted to *Jeroboam*, and forsook their lawful Soveraign for being overburdened with taxes, what got they by it? they lost their Religion (which we have seen in our time to go after the loss of allegeance) and inthralled themselves under far greater exactions, as most commonly it appeareth in a new usurped State, and they had their Rebellion rewarded with Tyranny, as there are many examples both Ancient and Modern.

Institut. tit. quib. modis Testam. l. 3. Cod. de Testam. L. 4. Cod. de Legibus. Distinctio. 21. c. 4. etc. 7. Decretal. de Electionib. cap. 20.

Hosea 11.

If men well consider they shall finde, that to help what is amiss in Government, is not by resisting, or which is the worst of all, by removing the power or the Persons set over us by Gods

Gods decree, and by diſſolving the bond of Kings, which God onely looſeth, or by caſting contempt upon their Perſons, which draweth on the deſtruction of their authority. It was ſaid by a wiſe man, *vi regere patriam aut parentes, quanquam & poſſis & delicta corrigas, tamen importunum eſt.* For ſuch men uſurp Gods right, and murmure againſt his decree, and controul his wiſedome and juſtice, and give a check to his divine providence. Such men are *puſilli animi, qui ita obluctantur, & de ordine mundi malè exiſtimant, & emendare mallent Deos quam ſeipſos.* They rather will controul the ſupream powers, and uſurp the power to help themſelves by evil means, then look whether they can finde any fault in themſelves. He who *reſiſteth the powers, reſiſteth the ordinance of God*, ſaith Saint *Paul*: Thoſe who *reſiſt Goverment are preſumptuous and ſelfe willed*, ſaith Saint *Peter*; theſe *filthy dreamers diſpiſe Government and ſpeake evil of dignities*, ſaith Saint *Jude*. All three Apoſtles teach us allegeance to our Soveraigne, which inſeparably is annexed to the love of our Country, both ſtand and fall together. He who is a Subject by birth as he is tyed unto his allegeance by the divine, ſo is he by the Laws of Nature and Nations; but our adverſaries who are as preſumptuous, ſelf-willed, and as great reſiſters of Goverment as ever were in any age, deny this ſtifly, and affirme that no natural allegeance is due to our Soveraigne, which is a vain dream; for there is a natural allegeance, as there is a natural obligation expreſſed in divers caſes in Law: *naturâ æquum; obligati naturaliter; obligationes quæ naturalem præſtationem habent: obligatio naturalis quod vinculo æquitatis, vinculo juris naturalis ſuſtinetur: is natura debet quod jure gentium dare oportet: & ſic natura libertus obſequium patrono debet; cùm naturali obligatione, ſeu ratione honor hujusmodi perſonis debeatur.* If the Laws have ordained ſo many diſtinct natural obligations and bonds between men, it were very hard that Princes ſhould be excluded from having any natural obligation between them and their Subjects. But there is a natural and a local allegeance. *Naturalia jura lex civilis corrumpere non poteſt: naturalia jura ſunt immutabilia, nec jure gentium tolli poſſunt, nec Senatus autoritate commutari.* The ſupream Laws of nature are immutable, as *Religio erga Deum; & ut Patria & Parentibus*

Job 12. 18.

Sallu.

Seneca.

Rom. 13.

L. 14. F. de condict. indebiti. l 2 & l. 8. F. de capit. minut. l. 95. S. 4. F. de ſolutionib. L 34. F. de reg. Juris. L. 26. S. 12. F. de condict. indebiti. l 12. Cod de in jus vocando. L. d Chanel. and Sir Edw. Coke, Poſtnati caſe. L. 8. F de Capite minutis. Inſtit de jure nat & gen. L 2 F de Influ. & jure.

parcamus: And herein is included our allegeance to our Soveraigne, as it is likewise in the fifth Commandment of the Decalogue, by the judgment of all Divines. There are other Laws of nature of an inferior rank and degree, not so much concerning our natural duties, as our rights, profits and liberties due unto us by the Laws of nature originally, which may be, and have been, by the Laws of nations, and by positive and Municipal Laws and customes, restrained and altered: *libertas naturali jure continetur, & dominatio ex jure gentium introducta est. Sicut jus gentium permittit multa, quæ jure naturæ sunt vetita, ita quædam vetat, permissa jure naturæ*; And we our selves may relinquish many rights and liberties, which we have by the Laws of nature and nations, but not our duties; neither may we wave those precepts of the Law of God and nature, as *honestè vivere, alterum non lædere, suum cuique tribuere*. But in many things natural right and common equity, may by a greater equity be restrained, *Alia est æquitas simplex, alia æquitas summa; summa seu major æquitas est quæ maximè spectat ad utilitatem publicam, & ad humanæ societatis vinculum; sed tunc jus naturæ & naturalis ratio non mutatur in se, sed causa subjectiva seu materialis mutatur, vel circumstantiæ casus variantur*; and then the positive Laws of several nations and customes do and may adde and detract from the Laws of nature and nations. *Jus civile neque in totum à jure naturali vel gentium recedit, neque per omnia ei servit: accidentia juris naturalis & divini, ut sunt circumstantiæ personarum, temporum & locorum, mutabilia sunt, manente vi ac virtute istorum jurium immutabili, & hæc tunc producere possunt necessariam dispensationem, limitationem, seu declarationem, dicunt Doctores. Declarari humana lege potest jus naturale, tolli non potest, limitari & declarari in multis potest, tam per interpretationem inter jus & æquitatem interpositam, quam per justam dispensationem, & per consuetudinem rationabilem: Papa non potest jus divinum tollere, potest ex causa illud moderari, ac limitare; nam quod in alio permitti seculo, in alio vetari, nec justitia ergo varia & mutabilis, sed tempora non pariter eunt: & multa quæ honesta videntur esse natura, temporibus sunt inhonesta.*

L. 64. F *de condict. indebit.*

Grot. de jur. bel. l. 3. c. 4.

Institut. de justitiâ & jure.

Cujac. & alii.

L. 6 F *de Justit. & jure.*

Covaruvias.

Naveri Manuale.

Augustinus. Cicero.

As a King cannot be discharged of his obligation to his People,

ple, ſo cannot they be looſed from their natural allegeance to their Soveraign: The faith between the Lord and his vaſſal is mutually obligatory, but much more ſtronger is the obligation between the Soveraign and his natural Subjects by birth: *Dominus in his omnibus fideli ſuo vicem reddere debet. Eadem fide tenetur Dominus ſubdito ſuo, ſicut ſubditus Domino* A man may change his habitation, but not renounce his countrey, or allegeance to his Soveraign, who is reputed the Father of his Countrey, and the Husband of the Common-wealth, *Pater urbiſque maritus. Domicilium commutari, & incolatui renunciari poteſt, origini non item: origine propria, neminem ſe eximere poſſe; quia patriæ naſcimur: Impios ſe eſſe Patriam vitando demonſtrant.* The Oath of Allegeance to our Soveraign, or of fidelity to our Lord, maketh not the Subject or vaſſal, but it tyeth him more ſtraightly. An Oath is not alwayes of the eſſence of the thing whereunto it is applyed, for Allegeance doth not begin by the oath taken at the Court-leet. The very oath of Allegeance, worketh not the bond in Law: Between the Lord and the Vaſſal, *Juramentum non eſt de ſubſtantia feudi: Feudatarius eſt obnoxius præſtando juramento fidelitatis, quod licet remittitur, non tamen remittitur fides & hominium, ſed onus ſubeundi juramenti, quia fides eſt de ſubſtantia non juramentum: hoc juramentum non eſt obligationis introductorium, ſed confirmatorium, & obligationis efficacioris gratia: in plus non obligatur, ſed efficacius & majori vinculo.* So the Solemnities of the Coronation, and the Oath there taken and given reciprocally, do not confer and add more allegeance unto the Subjects, or right unto hereditary Princes,

Lib. de feudis. tit. de forma fidelitatis. Distinct. 93 cap. eſto ſubjectus. cauſ 22. quæſt. 5. c. 18. cum Gloſſa. Lucan. L. 4. C. de origine. l. 4. Cod de municip. l. 1. S. 15. F. de ventre inſpic. Cod. ſit ſi Curialis. l. penult. Cod. de reſcind. vend. Coke Poſtnati Caſe.

Baldus and *Iſerna Cujac. ad decretal. Duarenus & alii. Operæ officiales, non cuiquam alii deberi poſſunt quam Patrono, cum proprietas*

earum, & in liberti edemis perſona, & in Patroni perſona cui eduntur, conſtitit. l. 9. F. De opitrib. libertorum, libertus natura operas Patrono debet: Patronus operas officiales alii delegare non poteſt, ſed fabriles, ſeu artificiales poteſt delegare, quia hæ operæ perſonæ Patroni non cohærent. *l. 26. S. 12. F. de condict. Jud. 6. Sic propriè & categoricè loquendo* Patronus non poteſt clientem delegare, vel alii cedere perſonam vel officium clientelæ quamvis poſſit alii cedere jura pecuniaria à cliente debita: nec Rex Francia transferre poteſt in alium jus hoc quod habet in vaſſallum, ſive vaſſallagium, vaſſallo invito. *Carolus Molinæus ad conſuetudines Pariſienſes, cum aliis. Dux Britanniæ noluit pro Rege Galliæ Regem Angliæ quaſi* Dominum agnoſcere, quamvis à Rege Galliæ delegeretur. *Car. Molinæus. & Cujac. ad lib. 1. tit 22. De feudis. Julius Clarus de Feudis. quæſt. 28* The Duchie of *Aquitaine* refuſed to accept *John* of *Gant* for their Soveraign, and ſaid they were of the right, and of the Dominion of the Crown of *England*, and by the Coronation oath not to be alienated. *Froſards* Hiſtory.

then

then they had by their birthright: for the right of Succeſſion was ſettled before, and ingraffed in the linage and family, according to priority, and proximity of blood, by the Lawes of the Countrey and of Nations. This Oath Kings ought religiouſly to obſerve, becauſe the adminiſtration of Juſtice, the preſervation of Religion, and the welfare of the People, are the principal parts of this Oath, and of his duty; not that his eſtate is hereby made or intended to be but conditional: his perſon is tyed in conſcience and in honour, the Authority ceaſeth not, if he fail in performance. The Oath and the Solemnities of Coronation maketh not the Prince, nor the neglect thereof doth not any way impeach his right: They do declare the Prince, and do admoniſh both him and his people of their reſpective duties, and do conduce to the perfecting of the pledges and ſtipulation of each others faith; *Couronnement & Sacre des Roys doivent prins, & intendus pur declaration, ou acceptation & ſubmiſſion au Roy deſignè de Dieu, qui la conſervè & fait le plus proche de la Couronne, non pour aucun droit aux ſubjects de doner la Royaume hereditarie per leurs voix ou Election*; But when the Prince is by Election; *Electio facit Imperatorem, ſed prius fuit Imperator, quàm coronam accipiebat à Papâ, & gladium ab Altari. Inaugurantur Reges in Eccleſia, ubi preces pro iis fiant; poteſtatem iis à ſolo Deo tradi, & idcirco Coronam eos accipere ab Epiſcopo, gladium ab Altari. Samuel* anointed *Saul* with oyle, and ſaid, *it is becauſe the Lord hath anointed thee to be Captain over his inheritance. Zadok* the Prieſt anointed *Solomon*, and they blew the Trumpet, and the People ſaid, *God ſave the King*; Anointing at the Inauguration drew with it a moſt reverend regard of the Prince. The name of the *Lords Anointed* in the Scripture and elſewhere, doth often occur: They interpret that of *Daniel*, the Anointed ſhal be taken away of *Hircanus*, from whom the Kingdom of the Jews was transferred, and unto whom the original of Anointing is referred.

The Cities in France which would not acknowledge *Henry* the fourth for their King, who ſucceeded rightly according to the Laws of that Kingdome, but continued in the former rebellion raiſed againſt his Predeceſſor, they could not help themſelves by ſaying that *Henry* the fourth was not Crowned, and

Du Tillet.

Gloſſ. ad decretal. tit. qui filii ſint legit. c. 7. Rex Rom. nondum coronatus, poſt electionem concordem habet tantam poteſtatem; unde nihil addit. Gloſſa ad tit. de jureiurando. in Clementin. Gloſſa in extravag. de Majoritate.

1 Sam. 10.
1 King. 39
Seld. in of Nobility.

and that they never acknowledged him for their King, and therefore they were not to be reputed Rebells: but they were answered by learned men, that they being Subjects by their birth, and continuing in their original sin, they added actual: Neither did *Bodins* distinction help his Country-men, so much as it disgraced him; in saying, *there was a difference between a universal defection and falling away of the People, and a Rebellion*; a distinction without a difference, but upon better consideration, he said, *neminem patriam repudiare posse, nec subditus potest imperio sui Principis seipsum eximere:* Neither can they raise an excuse for rebellion in a Monarchy out of that in the Roman Law, that in a Civil war they who ingage on either side, are not in the condition of forraign enemies; *Cum cives inter se contendunt, scissâ in duas partes Republicâ, Aristocraticâ vel* Popular, *captos hinc inde non fieri servos, quia non contra Imperii majestatem machinantur, nec in exitium Reipub. conenditur; ubi non sit tale bellum, quod Antonius gerebat, quod Cæsar vocabat non partium certamen aqualis juris, sed defectionem à populo Romano.* Thus when the title to the Crown is in controversy, it may seem hard to punish those, who upon no improbable opinion, nor inclination to rebellion, joyn with one side; and believe they are not rightly Subjects to him, against whom they bear armes; as it happened in the war between the houses of *York* and *Lancaster*, and in that war between *Cæsar* and Pompey, *multi dubitabant quid optimum esset, multi quid expediret, multi quid deceret, nonnulli quid liceret.* For although the Law saith, *leges quæ constringunt hominum vitas, intelligi ab omnibus debent, nec eas ignorare quemquam, nec dissimulare permittimus, tamen aliter est ubi jus dubium & intricatum est.* The Canonists say that when a divine Law, is not clear and certain, but hath divers interpretations, *& cujus varii sunt intellectus*, the Pope may dispense with it as he seeth cause. But men have no more power to renounce their allegeance then their liberty and freedome, which is inestimable, or to binde themselves to a corporal punishment, or from marriage: *Quæ onerandæ libertatis causâ facta sunt, non valent: Nemo dominus est membrorum suorum.* We cannot be bound by any covenants and conditions, by which *jus libertatis nostræ, aut jus patriæ nostræ laditur:*

Bodin. de Repub.

De Repub. lib.

L. 21. F. de Captivis.

Ayala de jure belli lib. 1. c. 2

Cicero.

L. 9 Cod. de leg. l. 12. Cod. de diver. reg. jur.

Decis. Rotæ Rom.

L. 106. F. de Regul. jur.

L. 1. F. Quar. rer. actio l. 6. Cod. deliber. causa.

L. 13. F. ad leg. Aquil.

L. 1. S. 2. F. de condition. & demon.

L. 13. F. de Policitat. l. 2. S. 44. ad SC. Tirril.

L. 13 F. de interdict.

qui

qui ſui juris ſit, tamen ſui ipſius Dominus non ſit: conditiones adjectæ utilitati publicæ adverſæ, remittendæ ſunt: quæ non à Patre, ſed à genere, à rerum natura, à civitate tribuuntur, ea manere incolumia: and many others the like in the Law. There is that which we cannot put from us, as there is that which none can take from us. Our allegeance is individual and perpetual. We may allow no leſs to the Parent of our Country, then the Romans did to the Patrons of them who were manumiſſed and made free; *liberto ſemper ſancta perſona Patroni videri debet*: and although the Patron were a perſon condemned by the Law, *tamen ſalva ſunt jura liberis Patroni, & conſuetum obſequium iis ſemper præſtandum eſſe à libertis.** Our allegeance as it is not ſo weak, ſo it is not ſo narrow, but it is of larger extent, then theſe men would have it to be: for there is a local Allegeance in reſpect of habitation and reſidence in another Countrey, due from Aliens and ſtrangers unto the Prince of the Countrey, wherein they reſide, and have protection, and enjoy the freedome of commerce, although they be not there naturalized, and made Deniſons.

L 9. F. de obſequiis. L 5 Cod. de obſequiis. L 4. F. de jure Patron.

* *Qui decreto publico deditus ſit hoſtibus, ut fuit cauſa Mancini, ſi hoſtis non recepiſſet, an civis Romanus manebat; magna Quæſtio erat L. ult. F. de legationib. licet dicitur quod civis eſſe deſinit, quem civitas repudiavit; aliud eſt in ſubdito originali, naturali licet deditus ſit à ſua Patria, & Principe: manet tamen ſua Allegeancia, quæ ubique locorum ſubditos tales tenet, quia naturalis ratio authoritate Senatus commutari non poteſt. l. 2. F. De uſufructu. ear. rer.*

And here we may take an occaſion to admoniſh all Strangers, Subjects to any Prince or State in league with our King, who aſſiſt and aſſociate themſelves with our Kings ſubjects in actual rebellion, for ſuch may and ought to be puniſhed as Rebels by either Prince, if they have no warrant for it from their own Soveraign: *quia hi lædunt Majeſtatem ſui Principis in lædendo Confœderatum ejus, nam confœderatio ſit tantæ potentiæ ut de duobus unum faciat. Satis eſt ad Peregrinum obligandum, quod dederit ſe ſocium, aut Capitaneum ſubditis Regis noſtri, à quo puniri poteſt ut reus criminis læſæ Majeſtatis; nam talis peregrinus obſtringitur ferè ut ſubditi, & propter hos ſocios ſuos tenebitur Majeſtatis etiam ipſe peregrinus. Qui ſedant in corpus aliquod, iſti volunt teneri cum corpore, ergo & pati debent. Chriſtiani non fiunt ſervi niſi militent, aut auxilium præbeant Turcis contra Chriſtianos, tunc non Chriſtianorum, ſed infidelium quibus ſe adjunxerunt numero habendi ſunt.* Such cannot fall into the rank of juſt enemies, who aſſiſt any rebels, and come

Alb. Gentilis diſput. ad Jul. Majeſtatis. Gentil. Hiſpanica advocationis, & ad Jus belli.

Ayala de jur. bel.

come in at leaſt as acceſſories, without a ſolemne denunciation of war or a juſt cauſe: Thoſe are properly enemies, *qui nobis, aut quibus nos publicè bellum decernimus, cæteri latrones aut prædones ſunt.* Theſe ſtrangers thus offending can claim no priviledge, or benefit, by any league or Laws, but may juſtly be puniſhed where they did offend, for by a univerſal Law *ratione domicilii vel delicti quis efficitur de foro alterius principis. Habet Imperium Præſes Provinciæ adverſus extraneos homines, ſi quid manu commiſerint. Alterius Provinciæ reus apud eos accuſatur & damnatur, apud quos crimen contractum oſtenditur, quod etiam in militibus eſt obſervandum.* The Laws of every Countrey give protection, and ſome priviledges to ſtrangers: Protection draweth Subjection, and Subjection Protection, but in vain he calleth for the benefit of the Law, who offendeth againſt the Law: guilt aboliſheth all honour and priviledge. If a priviledged perſon, according to the common ſaying, cannot uſe his priviledge againſt one equally priviledged, how much leſs againſt the Prince, the giver of priviledges, *& omnis dignitatis autor & culmen? In reos damnatos ex civitatibus nobis confœderatis animadvertimus: Forum ſortiuntur fœderati in Civitate fœderatâ*; and with this agreeth the Laws of nations, and the Law of England, for if an alien living in England, who is under the Protection of the King and the Law, commit treaſon, his indictment ſhall be *contra ligiantiæ ſuæ debitum.* The Divine Law ſo favourable to ſtrangers, giveth us warrant to puniſh ſtrangers, if they offend, as well as others. And therefore thoſe who call themſelves Souldiers of fortune, and think they may come into any countrey where there is combuſtion, and fall into any ſide, like birds of prey, without either warrant from their Prince, or conſideration of the juſtneſs of the cauſe, find themſelves often deceived and neglected by that partie which they did aſſiſt, and little pitied whatſoever hapneth unto them, whether they are ſlain, or condemned to die, either by the power or the right of the other partie. There are lately riſen up certain Politicians, not ſo violent, and in ſhew, not ſo malignant as others, who affirm either to flatter themſelves, or to deceive others, or to put a ſcorn upon ſacred allegeance, and to give it cunningly a foil, that when a ſtronger, although a uſurped

L. 24. F. de Captivit.

L. 3. F. de offic. Præſu.

L. ult. F. de accuſ.

L. 7. F. de Captiv.

Coke Poſtnati caſe.

Deut. 10.

Levit. 20.

power, doth hold men under a yoak, they ought quietly to ſubmit; and that all allegeance and former oaths taken for that purpoſe, are at leaſt ſuſpended, if not aboliſhed; as if they were to take for a rule alwayes the example of *Iſſachar*, a ſtrong Aſs couching down between two burthens, who did ſee that reſt was good, and that the Land was pleaſant, and bowed his ſhoulders to bear, and became a ſervant unto Tribute. Or the extraordinary example of the Iſraelites ſubmiſſion under the yoak and captivity of the Chaldeans, by the ſpecial and expreſs decree of God, and under his commination, that *what nation or kingdome would not ſerve the King of* Babel, *he* would *viſit that nation with the ſword, with the famine and with peſtilence.* But we cannot here ground an argument for juſtifying obedience unto all Tyrants and invaders of our Countrey: *omnes enim omnium charitates, una Patria complexa & ſupergreſſa eſt:*

Genes. 49. 15.

Jerem. c. 27. & c. 29.

Virgil.

——— Paterque natos nova bella moventes
Ad patriam pulchra prolibertate vocabat:

L. 35. F. de Religioſ.

Filius ſine ſcelere proditorem Patriæ, licet Pater ſuus ſit, occidit: In omni tempore bellum gerendum ſit pro defenſione ſua, & Patriæ & legum Patriæ, ne videatur homo deum tentare. Some learned men affirme; *Tyrannum qui per vim dominatur, nullum habens jus ad illius Reipub. regimen, poſſe à privato occidi, ubi nullum aliud eſt remedium ad Tyrannidem illam tollendam, etiam veneno & proditoriè.* Others ſay, *quod qui ſit invaſor Regis vel Reipublicæ juſtè interficitur, nam vim vi repellere licet; & quamdiu talis Rempublicam ſic obtinet, perpetuam gerit in Reipub. vim & bellum:* others affirme, *quòd quando nobis non patet legitima & poſſibilis via liberandi nos à Tyrannide, feramus ut poſſumus, & Deo negotium quod omninò ejus eſt, permittamus. Vidimus quanta obedientia dominus tetrum & ferocem illum tyrannum Nebuchadnezzar coli voluerit, non alia ratione, niſi quia regnum obtinebat: id autem ipſum erat cœleſti decreto, in ſolium regni impoſitum eſſe, ac in regiam majeſtatem aſſumptum. Hoc nobis ſi aſſiduè ob oculos obverſetur, eodem decreto conſtitui etiam nequiſſimos Reges, quo Regum authoritas ſtatuitur; nunquam in animos ſeditioſæ cogitationes venient &c.* I ſhall leave this diverſity of opinions in this poynt to the Judgment and diſcuſſion of others: I do

Covarruvias. Cajetan. & alii.

Soto de Juſt. & jur.

P. Martyr. loc. Com & Calvin. Inſtitut.

Calvin. Inſtit. lib. 4. c. 20. §. 27.

not

not require that men ſhould ſtrive againſt God and nature, and with unſeaſonable and unadviſed obſtinacy provoke the wrath of the Conqueror: for as ſoldiers are excuſable when they have done the utmoſt that wit and power can perform, and duty can exact, in defence of a City; ſo are Subjects, if through apparent danger of death and devaſtation, they render themſelves, and obey the enemy upon the beſt conditions that can be gotten; *Vox eſt quodammodo naturæ in omnibus ferè gentibus, ut ſubjugari mallent hoſtibus victoribus, quam bellicâ omniſaria vaſtatione deleri.* Thoſe thus compelled to take new oaths, ſome Doctors hold them not guilty of rebellion, or perjury, and repute thoſe latter oaths contrary to their former, being injuſtly exacted, to be void, and at the moſt, to be but a paſſive, rather then an active rebellion. But this cannot excuſe men when they are tyrannically, by the uſurpation of any fellow Subject of theirs oppreſſed, if they ſubmit unto that yoak, and ſwear whatſoever is required of them, and do not uſe all means poſſible to recover their liberty, and the rights of their Countrey. *Qui hoſtilis irruptionis neceſſitate tranſductus eſt, ad proprias terras feſtinare ſe debere, cum hoc ſolùm requirendum eſt, utrum cum hoſtibus voluntate fuerit, an coactus; ſi ſua voluntate apud hoſtes manſit, non eſt ei jus poſtliminii.* By this doctrine that Subjects under the yoak of any Tyrant and Uſurper, as well as of a foraign juſt enemy, ought quietly to ſubmit, and take new oaths contrary to their allegeance; our allegeance is a thing left at large, and made ambulatory, rebellion is cheriſhed, uſurpers incouraged, and men quieted from ſeeking which way ſoever the wheel turneth, to ſhake of any uſurped and tyrannical power, by any means lawful or probable. But thoſe Lawyers are the greater deceivers, who affirm that all the Lawes and Statutes, which do mention the King, and are made for his benefit, and for the ſecurity of him and his Subjects, as that Statute alſo made by *Henry* the ſeventh for the ſecurity of Subjects, when two are in competition for the Crown, ought to be interpreted for him, whoſoever hath gotten the ſupream power, and that by his aſſuming the name of King, which ſome of them abſurdly held neceſſary, men ought to ſubmit, although he had no more title then *John* of *Leiden*: And thus may one uſurper, if he

Auguſtinus.

L. 19. Cod. de Poſtlim. l. 20. F. de Captivis.

can, drive out another, find the Laws as beneficial for him as his ſword, and make them ſerve for any uſurper of a Crown, as well as for any Competitor for a Crown, how good ſoever his title be. Theſe pernicious Law-ſophiſters that excellent rule in Law doth controul, *Nulla juris ratio aut æquitatis benignitas patitur, ut quæ ſalubriter pro utilitate hominum introducuntur, ea nos duriori interpretatione contra ipſorum commodum producamus ad ſeveritatem: nec inducta ad unum effectum debent contraria operari: quod ob gratiam alicujus conceditur, non eſt in ejus diſpendium retorquendum; nec jura ſingularia producenda ſunt ad ſimilia, aut ad conſequentiam, licet jus commune trahitur ad conſequentiam ex majoritate, aut paritate rationis, ut dicunt Interpretes juris.* Theſe cannot blame *Machiavil* for ſaying, that Princes may break their faith, to preſerve themſelves from danger or damage, ſeeing they teach Subjects to wave their allegeance, and break their oaths for profit and quietneſſe: Neither can they condemn thoſe Jeſuits, for ſaying the Pope can abſolve Subjects from their oath of allegeance, if Subjects can finde cauſe and means to abſolve themſelves from that their duty & oaths, or when they take new oaths and ingagements, help themſelves by equivocation and mental reſervation. Such new oaths and ingagements do avail nothing, unleſs it be to procure perjury, and the more hatred on thoſe who procured them to violate their conſcience: With whatſoever cautel or mental reſervation, we ſwear, proteſt or ingage, yet God taketh it, as he which giveth the oath doth underſtand it: and if he who ſweareth, meaneth deceitfully, the interpretation cannot be made according to his fraudulent intention, but according to his meaning who required it, or elſe according to the proper and common acceptation and ſence of the words, eſpecially being given by a Judge or Magiſtrate: *fallit jurantem juratio facta per artem*, a cautelous oath deceiveth none ſo much as he that taketh it deceitfully; But when the words are ambiguous, and may receive different ſignifications, as he may worthily be blamed for taking ſuch oaths, ſo he that doth tender it willingly, ought not to receive any benefit thereby; *nemini dolus ſuus lucroſus ſit, aut eſſe debeat, nec dolus ſuus cuiquam per occaſionem juris proſit: Pactionem obſcuram & ambiguam iis nocere in quorum poteſtate*

L. 25. F. de Legibus L. 6. Cod de legib. l. legata inutilia. F. de adimendis legatis. Reg. jur. Canonici.

Paulus Juriſ. Conſultus.

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*uit legem apertiùs conſcribere, & interpretationem contra eum potius faciendam eſſe. Omnis oratio obſcura & ambigua tendiculà eſt, quæ ei qui tetendit potius fraudi eſſe debeat: ſed interrogationi obſcuræ vel ambiguæ, quis reſpondere non tenetur, niſi declaretur. Juramentum tunc intelligendum eſt ſecundum communem ſignificationem verborum, ſi utrique ſint in dolo; ſi à nentro intervenit dolus, tunc interpretandum eſt ſecundum intellectum utrinsque, ſi verba poſſunt utrique intellectui adaptari: ſi ab altero tantum ſit dolus, tunc intelligendum eſt ſecundum eum qui rectè intelligit: In contractibus & ſtipulationibus contra venditorem & ſtipulantem interpretandum eſt.** But in two contrary or incompatible Oathes taken by one man, if the former were not unlawful, but of things indifferent in themſelves, neither good nor evil, the ſecond Oath contrary to the former is invalid, and can hardly eſcape the taint of perjury; but if the firſt Oath was for the performance of a neceſſary and Moral duty, required by Divine and Humane lawes, the ſecond Oath being contrary to the former, although extorted by fear, is clearly void, and moſt commonly impious. When we are obliged to the performance of a duty or act, we as much as in us lyeth are obliged to withſtand and remove all impediments, which may probably hinder us in the performance thereof: for in a ſtipulation or promiſe, not to hinder an act, is regularly implyed an endeavour to have it performed; *In illa ſtipulatione, per te non fieri, non hoc ſignificatur, nihil te facturum, quo minus facere poſſis, ſed curaturum ut facere poſſis: & qui ſpondet dolum malum abeſſe, abfuturúmve eſſe, non ſimplex abnutivum ſpondet, ſed curaturum ſe ut dolus malus abſit: Qui non facit quod facere debet, videtur facere adverſus ad quod tenetur, quia non facit.* In a promiſe and contract, the nature and quality thereof, *& quid actum erat inter partes, & quid neceſſariò ſubintelligitur*, although expreſs words are wanting, muſt chiefly be taken into conſideration. The Divines ſay, that in the ſixth Commandment, *Thou ſhalt not kill*, is contained our duty, in preſerving the life of our neighbour, as far as our wit and power extendeth; *quia imperantur contraria officia, dum mala*

L. 39. F. de Pactis Cujac. & alii ad dict. l. 39. Baldus.

* They who make an Oath, Ingagement, or a Law obſcure or ambiguous, and not clear and perſpicuous (which are eſſential properties of an Oath or Law) it is preſumed, *quòd ſub involucro verborum, & per occaſionem obſcuritatis, tenduntlaqueos deceptionis.*

L. 50. F. de verb. ob.

L. 83. De verb. oblig. L. 21. F. de regul. Jur. L. 4. F. Quæ in fraud.

fieri

fieri vetantur. Therefore where we are reſtrained by our Oath of Allegeance, either from the hindrance of any good to our Soveraign, or from doing any act, or conniving at any mans act to the prejudice of his Perſon, Crown and dignity, it is neceſſarily implyed, that we are thereby injoyned to uſe our utmoſt endeavour for the preſervation and advancement, of both his Perſon and Dignity. In the Vaſſals Oath of fidelity to his Lord, amongſt other, theſe words are, *non ſufficit abſtinere à malo, niſi fiat quod bonum eſt, ne aliter cenſeatur perfidus & perjurus.*

L. 2. tit. 6, 7. de Feudis.

Chap. XII.

Of thoſe who onely accept of Offices and Imployments under Tyrants and Uſurpers.

THere is another ſort of theſe men with whom we incounter, and we may joyn them to the former, although they are not ſo ſubtil, yet do they help to ſupport the cauſe either wilfully, or through indiſcretion, or want of courage or conſcience, men not paſſive, but of actual compliance; acceſſaries they are, although ſcarce guilty of their greater impieties, nor of the beginning of the Rebellion; yet they being inſtruments in ſeveral ſervices and imployments, ſerve for the ſtrengthning of the arm of the wicked, and ſo do they communicate in the iniquity, & have fellowſhip in their works of darkneſs: Theſe are they who accept of Offices and places miniſterial, and of Judicature and of Magiſtracy, under the maſters of the miſchief, and do act by and under their authority: Theſe under the pretence of doing good to the People, in their ſeveral callings and offices, joyn in deluding the People, under a ſhew or ſhadow of Juſtice and liberty: *libertatem quùm reſtitui videretur interceptam eſſe: ſimulachra libertatis, ſeu veſtigia morientis libertatis, vel præſtigiæ verſuti juris; non vera juſtitia, & viva moribus, ſed picta coloribus.* By theſe means they endeavour to effect the ſettlement and continuation

Livius. Tacitus. L. 28. Cod. ad leg. Jul. de adul. Auguſtin.

of

of the iniquity and Tyranny, in ſeeking to content the People with ſpecious repreſentations and fictions of Juſtice, and equity like that which theeves are conſtrained to uſe among themſelves for preſervation of their ſociety; and this is to worke in the People an affection or quiet ſubmiſſion, to the uſurped Government, and to draw away their affections and cogitations from their Lawful Soveraigne, unto the upholding of that Government, built upon ſuch foundation, that under it, Peace neither from God nor man can ever be expected; neither the admittance of men into any places of truſt or honour, who are true lovers of the rights and liberties of their Country, or eminent for vertue or magnanimity. *Boni quam mali ſuſpectiores, ſemperque talibus hominibus aliena virtus formidoloſa eſt.* Thoſe men who are imployed under ſuch Goverment, find nothing but confuſion, they being made inſtruments only to delude the People, *quia nemo unquam Imperium flagitio quæſitum, bonis artibus exercuit.* Both the Maſters and the Miniſters walk on in darkneſs, for *all the foundations of the earth are out of courſe.* If *the foundations* (Religion and Juſtice) *be deſtroyed, what can the righteous do?* How can that State ever ſubſiſt, *ubi Juſtitia, æquitas, induſtria reddita non ſint? ubi vis legibus, judiciis gravitas, magiſtratibus authoritas, ſenatui Majeſtas reſtituta non ſint?* And although they often pretend reformation in matters of Religion and juſtice, and make ſome attempts, it is but *ad faciendum populum*: and although they have really ſuch intention of reformation, yet God having raiſed ſuch men, as a ſcourge of his vengeance upon a Nation, it is not to be expected, that he will imploy or bleſs them in ſuch good works, at leaſtwiſe untill theſe men repent, and his wrath be taken away. Theſe men who are thus aſſiſting, may conſider of the counſel that *Cato* gave to his ſon, not to deal in publick affairs when *Cæſar* had uſurped, in reſpect that upright dealing, the corruptions of the time, and in the State would not endure it, and in time-pleaſing, he could not be an honeſt man. Of theſe men complying and aſſiſting, the Emperour ſaith in his law, *niſi iſtorum manus in ſubſidium præſtò fuiſſent, certè non ita promptè flagitium perpetraſſent, qui majorem operam rei perpetrandæ adhibuerunt.* Theſe men are not unlike thoſe who afford aid and receptacle unto thieves,

Saluſt.

Tacitus.

Pſalm. 82.

Pſalm. 11.

Paterculus.

Plutarch. in Cato.

Novel. Leonis 70.

thieves, *qui in pari cauſa habendi ſunt*, for they are as uſeful and neceſſary, as receivers and concealers: *Qui opem fert, qui miniſterium atque adjutorium præbet, ſi ſciens accommodaverit, furti tenetur, licet nullum ejus conſilium principaliter ad furtum faciendum intervenerit. Non ſunt à culpâ liberi nec à pœna debent eſſe immunes, qui licet fuerunt illius machinationis ignari, tamen iis quos ſicarios eſſe ſciebant, in ſarcinis cuſtodiendis miniſterium præbuerunt.** S. *Paul* did acknowledge his conſent to the death of S. *Stephen*, by his ſtanding by and keeping the raiment of thoſe who murthered that bleſſed Martyr. Moreover ſome of thoſe who were guilty of the beginning of the rebellion, are not guilty of ſo much evill, as ſome who come ſince in as acceſſaries after the fact, who now do that which the firſt men did abhor; and thoſe alſo, who only act in the offices of truſt, and deal not in the State affairs, cannot eſcape the falling within the compaſs of abetting, upholding, and continuing the rebellion, by adminiſtring Juſtice, and helping thoſe to the benefit of the Laws, who continue willful in their rebellion, and therefore ought to have protection and benefit from no Law, as enemies to their King and Country: *Fruſtra implorat Eccleſiæ aut Legis auxilium qui committit in Legem vel Eccleſiam.* *Cicero* ſaid of *Cethegus* and *Lentulus*, *Legem Sempronium quæ de Civibus Romanis conſtituta eſt, ad eos qui eſſent Reipub. hoſtes non pertinere.* The Roman Senate when the People of *Rome* were quietly fallen under the Tyranny of the *Decemviri*, and reſted ſo with contentment, the Senate rather deſired an addition of more injuries, then to eaſe them of any burthens, that ſo having in deteſtation their preſent thraldom into which their own errour had led them, they might fall to a longing deſire of the former Government under Conſuls, and wiſh the old world were come again.

L. 1. F. de receptat.

L. 50. l. 54 F. de Furtis.

* Decretal. de homicidiis c. 6. Crimen non diſſimile eſt, rapere, & ei qui rapuit raptam reſervare. l. 9. Cod. de vi publica: Sinum præbere furenti, perinde habetur atque ſi manifeſti furti condemnatus eſſet. l. Sacrilegiis & ult. F. de Peculat. crim.

Livius lib. 3.

Bodin.

CHAP.

Chap. XIII.

Of the inſeparable conjunction and relation between the King and his Subjects, which cannot be diſſolved by any law or cuſtome; That Kings cannot alienate their Kingdomes, nor Subjects renounce their allegeance, nor bar the next ſucceſſour of the Crown.

Such is the inſeparable relation between the King and his Subjects, that as they cannot renounce or withdraw their allegeance from their Soveraigne, *Principis æterna autoritas in ſubditos*; ſo cannot Kings alienate their Kingdomes or any part thereof: although they are not reſtrained by poſitive Laws, yet are they by a univerſal Law, not made, but riſen up in the foundation of all Kingdomes, as the Lawyers ſay, *generali omnium Regnorum lege, cum ipſis regnis nata, & quaſi jure Gentium: Lex fundamentalis, immutabilis, cum ipſâ rerum naturâ unâ viget, conſeneſcit & interiit. Rex qui in ſua Coronatione juravit jura Regni ſui & honorem Coronæ illibata ſervare, poſtea nihil agere cenſetur, ſi quæ jura bonáve Regni ſui alienaret, etiamſi jusjurandum interpoſuerit de nunquam revocanda alienatione; liberum tamen ei eſſe quandoque revocare, prævalere prius juramentum quod fuit legitimum poſteriori quod illegitimum eſt.* The relation between a King and Subjects maketh a union and reciprocation ſo ſtrong, that there can be no admittance of a ſeparation. *Correlatum cuilibet relato reſpondet, uno poſito ponitur alterum: in correlativis idem judicium*, and what is diſpoſed in one, is ſo in the other, when there is the ſame reaſon for either: And ſo cannot a King and Parliament and all the Powers in earth bar the lawful Succeſſor from the rights of Soveraignty, the individual and ſacred rights of the Crown; neither bind, nor limit the ſucceſſion. *Henry* the Cardinal, afterwards King of *Portugal*, having no iſſue, and ſeeing diverſe

Bodin.

Baldus, Jaſon. Caſan. Cat. glor. mundi & alii.

Decretal. de juriſjurando c. 33. & Cujac. ad dic. cap. 33.

Conſtagio del union. di Portugal & Thuan. hiſt.

in competition for the Crown, granted a Commiſſion to ſome of his own Subjects to determine the right of Succeſſion after his death, and unto ſome others he gave another Commiſſion, to govern the Kingdome after his death, until the right of the ſucceſſion was determined. Both theſe Commiſſions with the opinions of his own Lawyers for their juſtification, were ſoon after his death over-ruled by the ſword, and were alſo held void by Law, becauſe he ſought to raiſe a body in his Kingdome without a head, and would *præire ſucceſſorem ſuum*, and raign after his death; for by his death his juriſdiction and authority was determined, and his Commiſſions void: *Poteſtas delegata morte delegantis finitur*: No Magiſtrates can give Commiſſions for acting any thing after their death, neither upon a day which falleth after they are out of their authority, whereupon it is declared, *quòd qualibet diſpoſitio cenſetur facta, eo tempore in quod confertur, nec valet quæ in id tempus procedit, quo res non erat amplius diſponentis; quia paria ſunt, aliquid fieri tempore inhabili & prohibito, vel tempore habili & conceſſo, & conferri in tempore inhabili & prohibito.* The Commiſſion for determining the Succeſſion, made the Portugals who were parties Judges, for they were of the material part, concerning which the controverſie was: and whatſoever they determined was void; *non patetur jus dicenti, ſi ſupra ſuam juriſdictionem jus dicere velit, & nemo plus juris ad alium transferre poteſt, quam ipſe habet.* The Kings Commiſſions and Mandates, as alſo all Offices, unleſs it be thoſe which by law are excepted, are void by his death, eſpecially thoſe which are granted in *vim juſtitiæ adminiſtrandæ: Mandatum Principis, in vim juſtitiæ datum, morte Principis expirat, ſecus, ſi in vim gratiæ. Sed gratia data ad beneplacitum concedentis, per ejus obitum, per quem ipſius beneplacitum omnino extinguitur, eo ipſo expirat.* And if he cannot bind himſelf, then not his Succeſſors, *niſi in caſibus à jure & conſuetudine permiſſis, & ſunt de conſuetudine Principatus, & de natura officii Regii*, as the Lawyers ſay. By this we raiſe a doubt, concerning the validity of many matrimonial contracts made by Princes, whereby they endeavour to bind or alter the ſucceſſion of the Crown, which is not ruled by thoſe lawes which are for private mens deſcent and inheritance. Whether uſe and common practiſe may juſtifie theſe contracts.

Lib. 6. ff. de juriſdict. L. 13. F. de juriſdict.

Baldus & alii & deciſ. Rota Rom. 240. & 193. Tom. 3. Farinacii.

L ult. F de Juriſdict. l. ult. Cod. ſi à non competenti Judice.

Deciſ. 101 a Romana. Caſſaneus ad conſuetud. Burgund. & alii Decretal. de reſcriptis c. 5. C. S. Tamen, ſi cuiquam.

contracts of Princes I will not diſpute. *Pacta & Statuta de mutua ſucceſſione in caſu deficientium liberorum maſculorum inter Principes, Comites, Barones Imperii in uſu eſſe frequenti, & conſuetudine hominum memoriam excedente confirmata valere.* We find not the like Laws or cuſtomes in other kingdomes, except the Law Salick in *France*; for the common opinion is, that *Statuta, excludentia faminas ex hæreditationibus odioſa ſunt*: *Pactum in dotali inſtrumento, ut filia contenta ſit dote, & nullum ad Paterna bona regreſſum haberet, juris autoritate improbatur. Et pactum de non ſuccedendo jure civili improbatur. Si Pater inſtrumento dotali comprehendit, filiam ita dotem accepiſſe, ne quid aliud ex hæreditate Patris ſperaret; eam ſcripturam jus ſucceſſionis non mutaſſe conſtitit; privatorum enim cautionem legum autoritate non cenſeri; leges non mutare.* By theſe contracts Princes pleaſe themſelves for a time, out of a deſire to advance ſome deſigns, and afterwards repentance and diſſentions do often follow. Unto this may we add, thoſe accords and tranſactions between Princes, for exchange and alienation of ſome part of their dominions, which come by deſcent from their Anceſtors.

Gail. obſervat. lib. 2. Pro bono pacis inter Principes componenda vel tuenda tolerari matrimonium, quod aliàs erat illicitum. Cujac. Comment. ad Decretal. tit. de Deſponſatione Impuberum, cap. 2. unde verſus, Pax ut ſervetur, moderamen Juris habetur, cap. 2.

L. 3. C. de Collationib.

L. ult. F. de ſuis & legit. hæred.

Theſe alienations have commonly the like ſucceſs as the former; yet are they much to be favoured, when they paſs between Princes upon equal tearms, and are for the procuring of peace and ending of controverſies, the conſent of the Subjects on both parts concurring: *nam Dominus ſine voluntate vaſalli feudum alienare non poteſt; ſic Princeps ſubditos ſuos alienare non poteſt, quia non tantum prædia ſua & domini jus, ſed ſic ingenui homines alienantur, quorum commercium nullum eſt; ſed propriè tamen non Populus alienatur, ſed jus perpetuum eos regendi; non hominum liberorum ſit alienatio, ſed jus quod in homines competit tranſcribitur.* The Provinces and Cities of France declared unto their King *John* Priſoner in England to *Edward* the third, as did likewiſe thoſe of *Gaſconie* when they were to be turned over to the allegeance of *John* of *Gaunt*, that without their free conſent being freemen born, and not ſlaves, they could not be made Subjects to another Prince. And thus when

L. 2. tit. 34. de Feud.

Guido Pap. deciſs.

Grot. de jur. belli lib. 1. c. 3.

French Inventors. Paul. Æmilius. Baldus & Chopin. de dominio.

Bodin. when *Francis* the first was pressed to the surrender of certain territories, according to the agreement between him and the Emperour *Charles* the fift, the Court of Parliament of *Paris* did declare, as before, that the King could not do it; *Regium summumque apud Gallos dominatum, Regia jura, minui, dividique, non licere, non posse. Rex Johannis Angliæ, aut alius Rex, alienatione regnorum suorum, vel servitute impositâ, non possunt jus posterorum ladere, nec subditos suos ad alterius* Instit. de inutil. stipulat. & 2. *Principis obsequium reducere. Quæ naturâ suâ dominio nostro exempta sunt, in obligationem deduci non possunt.*

By this that hath been said, and by that which followeth, it will appear how absurdly some men of more learning joyn with our adversaries, in affirming that the People have an original right in them to reform, limit and remove their King; and that although the Regal power be setled in the Stock & Family, yet so as the stock and linage itselfe is onely chosen, and not all and every branch To prove this wild Chimera, some of their Champions, the better to make way for deposing of Princes, bring divers selected places of scripture, joyning unto them strange and false inferences and interpretations, with as feeble arguments deduced; rather to prove themselves seeds-men of sedition, then sincere Patrons for the Peoples liberty. They regard not their often being learnedly confuted, but still they will go on with arguments drawn *à facto ad jus, à dicto secundum quid ad dictum simpliciter*, raising general conclusions, drawn from some singular and extraordinary examples, not warrantable for our imitation, although serving excellently for our instruction. It was never found in any Author, nor heard of till of late, that any People did choose a King, and his linage and race to rule over them, and did or could reserve power to themselves to take, or refuse, such of his posterity and race, as they pleased at any time. Without any mention of original right, or reservation of power in the People, the wise man saith, Book of Wisdome cap. 6. that power is given unto Kings of the Lord, and soveraignty from the Highest, who will try their works, and search out their Counsels. And another man of much prudence, and a great favorour of the Peoples rights and liberties, saith, that Comines: God had therefore reserved Kings for the greatest punishment, because none in earth had power over them. We finde in

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Our ancient Law-books, *Britton* and *Bracton*, that the Kings jurisdiction is above all jurisdictions, and that from him all are derived; and so say the Civil Lawyers, *omnis jurisdictio vel Principis esse, vel à Principe manasse.* It doth not help our adversaries, their affirming that Princes are appointed for the good of the People, which is true, neither their disputing, whether a Kingdome, be *hæreditas, jus, functio, aut possessio*, and a King be *proprietarius*, or *usufructuarius* onely. These busie Questionists serve to perplex mens judgments, and to pervert the truth, and are men, *novandis rebus quàm gerendis aptiores.* Kings are for the People, as the soule is created for the body, and the head for the members, to wit, in a superior degree to command, but never to set the feet or the members above the Head. Kings were anciently called *Pastores Populi*, the Fathers and Husbands of their Countrey, *Pater urbisque maritus: Romulus Rex, Parensque urbis Romanæ.* It is certain that Kings have a good estate of inheritance. *Hæreditas est successio in universum jus quod defunctus habuit*, and how can this be denyed of a Lawful successor in an hereditary Kingdome? *Ad millesimum gradum extenditur regni successio, & in regno successivo, repræsentationi locus est in infinitum. In regnorum successione distingui debent regna quæ pleno modo possidentur & in patrimonio sunt, ab his quæ modum habendi accipiunt ex Populi consensu.* This Royal succession doth differ from private mens successions, neither is it ruled by the subtilties and nice distinctions of the Roman Laws, or the Law of the *Feudes*, neither by the municipal Laws and customes in several Countreys which concern private mens inheritance and succession; for as was said before, *quæ sunt publici juris & Coronæ, separatam habent à jure privato causam & rationem.* The Interpreters of the Law agree, that the Law *Julia* and *Papia* touching the estates and inheritances of men, doth not extend unto Kings, although the words are general, which in Laws and Statutes seldome or never do reach unto Kings: *Princeps legibus solutus est, id est, lege Julia & Papia, non ab omnibus legibus: lex imperii solennibus juris, Imperatorem solverit: omnibus autem à nobis dictis Imperatoris excipiatur fortuna: Fruitur Princeps singularibus privilegiis, licet in multis casibus eodem cum cæteris jure utatur: nihil tam proprium Imperii est, quàm legibus vivere:*

Our most ancient Justice *Bracton* saith, *nemo Regi necessitatem imponere potest, cum superiorem non habeat nisi Deum; & satis ei erit ad pœnam quod Dominum expectat ultorem.* Tacitus.

John Bede of the Right of Kings.

Lucan.
Livius.
L. 62. *F. de reg. Jur.*
Baldus & alii
Grot. de Jure belli lib. 2. c. 7.

Bartol. & alii.

L. 3. *Cod. de Testament. & Cujac. ad dict. Tit. Nevel. 105. in fine, & Gothof. ad dict. tit. 105. dict l. 3. C. de Testament. l. 23. F. de legatis. 3.*

decet

decet enim tantæ majestatis eas servare leges quibus ipse solutus esse videtur. The most learned affirme, *Regnum non assimulari simplici dominio, ut pater ex jure transmittendi regnum ad liberos, jure successionis Regiæ*; and that doth so appear by many singular rights, that there doth *competere Regi universale dominium terræ*, which rights are the marks of universal dominion, and did spring up with the erecting of Kingdomes without any concession of the People, or any other, although at the first the People did elect their King. *Regi competere universale dominium terræ, satis liquet ex legibus de Thesauris, de iis qui moriuntur sine hæredibus, de spuriis jus legitimationis non habentibus à Rege, qui solus id conferre posset.* Yet although it be said in the Law, *omnia sunt Principis*, it is qualified with this explication, *omnia sunt Principis imperio, singulorum dominio seu proprietate: omnia esse Principis, id est, fiscalia & dominica sua sunt in suo patrimonio; hæc sunt quasi propria Principis; omnia alia sunt propriè Principis imperio, singulorum dominio: Res fiscales quasi propriè Principis sunt: Sed si omnia sunt Cæsaris, quid erit Dei?* It hath been often seen, that when the right of succession descended to the next Lawful heir, who hath been barred by former acts of Parliament, those acts were never held valid to deprive him and his heirs, whom the Law accounteth, *successores juris, territorii, & jurisdictionis universalis, tam active quam passivè: & successio Imperii, non est sub jure Imperii. Proximior de sanguine Regio, non obstante quod crimen læsæ majestatis commisisset, & esset indignus, potest tamen indilatè, & absque aliquo temporis intervallo Regiam Dignitatem assumere, & Rex vocari.* King *James* in his book to his son admonisheth him never to defraud the neareſt by right of succession, what conceit soever he had of his Person who was the next: for Kingdomes are ever at Gods disposition, and in that case we are but life-renters, lying no more in the Kings, nor Peoples hands to dispossesse the righteous heir. All former defects are purged by the descent of the Crown; and this it seemeth all Princes and States who make leagues and contracts with Princes do acknowledge; otherwise they have been, and may hereafter be deceived, in making contracts with Princes, who are, and may be declared incapable to grant or receive any thing, by vertue of an act of Parliament, or by any

Bald. & alii.

Ex libro Jacobi Regis.

Seneca, Cujac. ad tit. Cod. de quadr. pesc. vip. L. 2. S. 4. ne quid in loco pub. Tertul.

Grot de jure belli l. 2. c. 7. Glossa ad cap. cum secundum leges, & etsi neces se, de hared.

any original or dormant power remaining in the People, or in any other. For thus ſhould Princes have rather *precariam poſſeſſionem, quam legitimum Imperium*, whereby a multitude of endleſs quarrels would dayly ariſe at home and abroad, to the prejudice of mens right, and to the diſturbance of the peace of Chriſtendome. They who argue that a King cannot alienate his Kingdome, ſay, that Kingdomes are not in the full propriety and patrimony of the Prince, becauſe *liberi homines in commercio non ſint*, and they add alſo, that a Kingdome is not onely a ſucceſſion hereditary, but a right alſo of primogeniture and proximity of blood, not as ſimply deſcending from the father or Anceſter, *ſed ſit etiam ſucceſſio virtute legis Coronæ, ſeu conſuetudinis inveteratæ & immutabilis regnorum. Agnati Regum, non tanquam agnati ad ſucceſſionem vocantur; cauſam, titulum & jus ſucceſſionis, non à Rege noviſſimè defuncto accipiunt; non jure hæreditario, ſed jure ſanguinis & ſtirpis, & conſuetudinis regni. Frequens in regnis, eſt ſucceſſio non hæreditaria, ſed linealis dicitur, non jus illud quod repræſentationis dicitur, ſed jus in poſteros ex primo rege venientes tranſiens ordine certo.* By an argument drawn from theſe diſtinctions in the Royal ſucceſſion, *Henry* the Second of *France* ſignified to the *Switzers*, that he was not bound to pay all the debts of his father, becauſe he held his Scepter *lege Regia, non ſimplici hæreditario jure:* And ſo did *Lewis* the twelfth anſwer thoſe who demanded of him Artillery, lent to his Predeceſſour *Charles* the Eighth, that he was not the heir of *Charles*, but his Succeſſour of the Crown. *Quia in jus Regni duntaxat ſuccedit, & quà talis ſucceſſor ſit, non obligatur contractibus prædeceſſoris ſui, quia jus non accepit ab eo qui proximè deceſſit: Tamen hi contractus obligant ſucceſſorem, ſi probabilem habeant rationem, quod in dubio ob regentium autoritatem præſumi debeat: nec res hæc ad naturam negotiorum geſtorum exigenda eſt, ut tum demum ratus ſit habendus actus, ſi utiliter geſtus ſit: nam ad tales angustias reipublicæ Imperantem redigere, ipſi etiam Reipub. eſſet periculoſum. Sed ſucceſſores tenentur pro utiliter geſtis, quia pro utiliter geſtis tempore tyrannidis tenetur dominus verus, & contractus tum geſti valeant. Non admittenta eſt exceptio adverſus hos contractus qui ſunt Regii; & ſucceſſores tenentur, ſi contractus ſint ex natura & conſuetudine Principatus.*

Covarruvias.

Hotoman. de jur. ſuc. Reg. & Baldus Carolus Molinæus ad conſuetudines Pariſ.

Grot. de jure belli. lib. 2. c. 7. n. 22.

Grot. de jure belli. lib. 2. c. 14.

Gentil. de jure belli, l. 3. c. 22.

Birth.

Birth giveth right unto Soveraign dominion in all hereditary Kingdomes, which right is not holden as of the Patrimony of the People, but the King hath it as a Proprietor independent by the Royal Law, and inveterate custome of succession, which custome is an immutable Law, as in France; *Mesdames filles de France, non par la Salique ley escritte pur les seuls subjects, en sont perpetuelment excluses par costume & ley particulare de la maison de France:* whether this Salick law extendeth to the succession of the Crown is a question, *In terram Salicam mulieres ne succedant; terram Salicam, regnum, Franciamque interpretabuntur: Lex Salica cum Regno cœpit; ad quam Franci non facti, sed nati, & educati; certissimum Francia Palladium: In hoc maximè introducta est hæc successio Agnatica in Francia ne per Fœminarum matrimonia ad peregrinum sanguinem Imperium deveniret.* In the great controversie concerning the Succession of the Crown of *Portugal* before mentioned, although the Lawyers did much differ in their opinions upon the several titles of the pretenders to that Crown, and much perplexed themselves upon the distinctions *inter jura proximitatis, repræsentationis & primogenitura*, yet they all agreed, that inasmuch as *Portugal* was gotten at first by conquest, and not by any election of the people, the people had no colour of right, so many being living of the blood-Royal. Neither was there any Law or custome for excluding the Prince of *Parma* one of the Competitors, in respect he was an alien born, or because his mother from whom his right came, the eldest sister dyed before her younger sister, the Dutchess of *Braganza*. The lawes of other Kingdomes, as the law of *England*, doth distinguish the rights of the Crown, *jura regalia, jura Coronæ, lex Coronæ*, by which peculiar law, the eldest is preferred without respect of the whole bloud. Neither doth infancy worke any disability in the Person of the King, or by being born an alien: and all this in respect of his politick capacity, adherent to his natural Person, and so all defects are purged, and all impediments removed by this regal right of succession.

Tillet, Bodin.

Paulus Æmilius. Thuanus & Car. Molineus ad Consuetud. Paris.

Lord Chancel. case of the Postnati.

CHAP.

Chap. XIV.

Of the Beginning and Continuation of Kingly Government.

If this ſupream power, as they affirme, be ſtill inherent in the People, and that they had this ſupream and original power immediatly from God, or by his will and approbation; and that the power of rule and domination, by vertue of the Law of nature is in the community of men and in no particular Perſon; and although they do transferr this power, yet they may, when there is a cauſe, aſſume it again: How then can they reconcile themſelves with St. Paul, who ſaith, *the Powers are of God, are ordained of God*; or with Saint Peter, who ſaith, *whether it be to the King as the Supream?* And how can they reconcile their doctrine, with that which *Ariſtotle*, and other learned men affirme, that by nature moſt men are ſubject and ſervants to others, *minùs ſapientes, minùs perfecti, naturâ ipſa ſunt ſervi & ſapientibus ſubditi, ut ab aliis regantur*; and theſe thus Subject are the greater number. *Servitus eſt naturalis, ratione utilitatis conſequentis, ſcilicet quod quis regatur à ſapiente; & licet eſt contra primam naturæ intentionem, eſt tamen ſecundùm naturam, juxta ejus ſecundam intentionem: & ita eſt ordo naturalis in hominibus, ut ſerviant aliqui: Perſona eſt domina vel ſerva ratione naturæ: Eſt utilis ſervitus, cùm improbis aufertur injuriarum licentia, & domiti ſe melius habebunt, quia indomiti deteriùs ſe habuerunt. Licet initio homines natura liberi naſcebantur, & jure naturali non erant dominia diſtincta, in ipſo quidem ſtatu naturæ primo; non tamen ex hoc negatur poſſe jure humano & gentium, hominum creſcente malitia ſtatui ſervitutem, & fieri dominorum diſtinctionem, idque ratione naturali factum fuiſſe apparet ex eo, quod utile valdè Reipub. ſit & ſocietati humanæ.* And ſo Saint *Auſtin, Nullus natura in qua priùs Deus hominum condidit ſervus eſt hominis aut peccati; verum & pœnalis ſervitus ea lege ordinatur,*

Aquinas.

Auguſtinus.

Covarruvias.

L. 19 de Civ. Dei. cap. 15.

*dinatur; qua naturalem ordinem conservari jubet, perturbarive vetat, quia si contra eam legem non fuisset factum, nihil esset pœnali servitute coercendum.** Seeing therefore that the best and wisest men are, and ever were, the fewest in number, and that the greater number are by the law of nature, and ought of necessity for the preservation of human societ, to be in subjection or in servitude, and cannot have a right unto liberty, in respect of those many imperfections and vices which do raign in them: how can they have a right unto domination and rule, and to transfer a power, which they never had, neither were ever capable of it, unless it be such power as they have lately usurped in our Countrey, whereby they have cut in sunder the reins of † Government, and brought all things into confusion?

* *Servitus est contra jus naturæ propriè quoad statum innocentiæ, quò ad statum post peccatum non est contra jus naturale; Imò servitus aliqua, saltem quo ad statum post peccatum, dici potest secundum jus naturale, quatenus est quædam pœna determinata jure humano pro delicto, quod jure naturæ castigandum est, ut sentit Thomas & Navarrus.*

Sin cast us all into servitude, and out of this servitude all could not arise and have a natural right unto either domination or liberty. What power of domination can we find that God gave at first to his selected people the Jews, or was in them by nature? In the time of the Patriarchs all supream, terrestrial just power, Paternal, Sacerdotal, Regal, was in them: They were before the Law given in the place of Kings and Priests. What power can we find that God gave unto his People, or was in them, when he gave Kings to rule over them, a government most agreeable to nature, and which carrieth with it the most appearance of the divine approbation and imitation: a Government in the infancy of the world proceeding immediately from the Patriarchical, derivatively and *ex traduce*? We find in the first age of the world after the Floud mention made of Kings which ruled every where; and of the first war, wherein many Kings were ingaged; and no mention of any other Government then Regal. There were diverse Kings of *Edom*, and in all the Countreys round, before there was a King in Israel. In the time of *Abraham* saith St. *Austin*, *eminentia regna erant Sycionorum*,

† As did those ten Tribes who usurped upon the lawful progeny of *David*, as they did upon Gods right, who said unto them, *Ye have set up Kings, but not by me, and made Princes that I knew not.* Hosea 8. 4.

Genes. 14. Deut. 17. Genesis 36. Deut. 14. *De Civit Dei lib. 16. c 17. & c. 3.*

cionorum, *Egyptiorum*, *Aſſyriorum*, and before that time roſe up *Nimrod*, ſaith he, *& factum erat initium regni ejus Babylonici.* And here by the way, we meet with an argument of the Anabaptiſts, which is, that ſeeing from ſuch a Tyrant Monarchy and Magiſtracy had ſo evil a beginning, it ought not to be held lawful. But there is a difference between the powers which are of God, and the adminiſtration, or the evil execution of thoſe powers; as there is a difference between a lawful power unjuſtly uſed, and an unlawful power juſtly uſed; for, as St. *Auſtin* ſaith, the malignity of a tyrannical uſurpation ſhall never be purged and made praiſe-worthy, although the uſurper uſe all clemency and juſtice in his Government, nor the Regal power ever be ſubject to juſt reprehenſion, although a King become a Tyrant; *Aliud eſt injuſta poteſtate juſtè velle uti, aliud eſt juſta poteſtate injuſtè velle uti.* Although Tyranny did begin by *Nimrod*, yet Government and Magiſtracy proceeded not firſt from him: It was eſtabliſhed by divine decree before him. The government of the Fathers of the Families was before *Nimrod*. All the Progeny ſubmitted to the Paternal and Regal government of the Head and Founder of the Family. From hence was the original of Regal government, and a natural reaſon and cauſe for the producing and continuation thereof, which reaſon had its operation amongſt the heathens; In the beginning were Kings, *nam in terris nomen Imperii id primum fuit.* But after equality and moderation were laid aſide, and ambition & violence brake into Regal government, & domination and power prevailed, ſome People, *poſtquam Regum pertæſum erat*, after they were weary of Kings, as the *Cretenſians*, *Spartans*, *Athenians*, governed themſelves by their own laws, and not by Kings: ſome itching humour peradventure took them in the head, or they took Ariſtocratical and Democratical government as a medicine to cure Tyranny, and that did but change the malady; for thoſe States were never free from ſeditions, or from many Tyrants Reigning at one time, which was worſe then the Tyranny of one man, as they felt it at *Rome*; *Fremebant Populi multiplicatam ſervitutem eſſe, centum pro uno dominos factos eſſe.* Which is better, ſaid *Abimelech*, *to have threeſcore and ten men to have dominion over you, or but one man only?* Into this miſerable condition

Cauſa 14. *quæſt.* 5. *cap.* 9.

Saluſt. *Tacit. lib.* 3. *Ann.*

Livius lib. 1. Judges 9. 2.

were the *Iſraelites* fallen, when in place of one King, they had not only many, but alſo one *Micah* a private man; for all their Judges ſet up a new Religion, and an Idol, and diſorder upon diſorder followed, and the reaſon is given in ſundry Chapters, becauſe *there was no King in Iſrael.** This deſire of changing Monarchy did poſſeſs but few People; *generale quippè pactum eſt humanæ ſocietatis obedire Regibus: Reges initio omnem poteſtatem habuiſſe; arbitria Regum pro legibus erant.* After the *Aſſyrians* and *Perſians* the *Grecians* and *Romans* had the univerſal Monarchy; what power their Subjects had, or did ever pretend to have concerning domination and government, doth not appear in any Hiſtories: neither did any of the ancient Law-givers, and wiſe men, Philoſophers or others ever mention any ſuch natural, primitive and ſupream power to have been originally, and ſtill to remain habitually in the People over Kings. There is no doubt but *Nebuchadnezzar* and his Succeſſors raigned tyrannically, and yet the Prophet ſaid, that God gave them power and dominion over men: God never gave, neither any others did ever pretend to have right to depoſe any of them for their Tyranny, as being any forfeiture of their authority.

* The miſerable condition of the People is declared by the want of a King, and of the exerciſe of the true Religion, Hoſea 3. Jud. 18. 1. Jud. 17. *Auguſt. Confeſſ. lib.* 3. *cap.* 18. *l.* 1. *& l.* 2. *F. de Hiſtoria juris.*

They would have it granted unto them, that Kings have not their authority immediately from God, becauſe they are either by hereditary ſucceſſion, or by election, gift, contract or by conqueſt; all which are but humane titles, and meant of acquiſition not divine. But they ought to find a difference between the power which is immediatly from God, and the means uſed for obtaining this power, which are humane; *Aliud res eſt, aliud modus rem habendi*, the means and the form muſt be diſtinguiſhed from the authority of governing; *forma de hominibus eſſe poteſt, de cælo ſemper autoritas*: and thus ſay the Doctors of Law, *Principes legitimi ſunt, aut Succeſſione aut Electione, vel donatione, vel jurè belli; hos titulos ab hominibus accipiunt: Titulus ſeu conditio, ſive modus ab hominibus accipitur, poteſtas & autoritas eſt immediatè à Deo: Sic Pontificis Electio ſit ab hominibus, ſed perſona canonicè electa Deus dat Pontificalem poteſtatem, quam à Deo immediatè accipit.* By which of theſe humane means Princes

Princes are advanced to rule, or by what form the Commonwealth is governed, or in whom the Soveraign power is vested, if they are lawfully advanced to their callings and estates we must acknowledge them for Gods leiutenents on earth, and the power they have to be his, and his ordinance, and who ever resisteth this power resisteth the ordinance of God. Those affirme that the power of rule and government is derived from the People unto Princes, and that *Reges à Populo creati sunt, in quos suum transtulit Imperium ac potestatem, & quòd potestas dominandi seu regendi politicè homines sit ex vi solius juris naturæ in hominum communitate: & potestatem hanc à Repub. ad Principem manasse:* Yet they acknowledge that this Power is not immutably setled and remaining in the People, *sed per consensum ipsimet communitatis, vel per aliam justam viam posse illa privari & in alium transferri, ut per justum bellum, quod verum titulum & dominium conferat,* So as by the opinion of those who are in part of our adversaries side, they cannot justify their allegation, that this Power and right of domination and rule, is alwayes inherent in the People, and in the whole State of human societies conjoyned, although they had it originally in them; so as they may assume it again, without having the influence of this their supposed original power barred by any means, as our adversaries affirm. For we find amongst most Nations, that they have received laws and their liberties from the grant and permission of the Conqueror, and not he and his successors their Power and authority from the vanquished people: Neither is there any authority or right, which any People have or ever have had in matters of State and government, but it may, and oftentimes hath been limited and abolished, not only by positive laws, and continued customes, but by their own concession and grant; as the Romans granted all their supream authority to their Kings *lege Regia*, or else they may be deprived of it by the right of Conquest, especially proceeding from a just cause and lawful title, whereby the Conqueror maketh all his own which his sword toucheth, if the vanquished continue unseasonably obstinate, and do not help themselves by timely surrender or composition. God who giveth victory in the day of battle, doth

Soto de just. & jure lib. 1. 9. 1. artic. 3.

Suarez. de legib. lib. 3. c. 3. & 4. & alii.

Suarez. & alii.

Institut. de jur. nat. & gent. & tit. F. de bist. jur. l. 1. & l. 2.

Deut. 20. 12.

doth thereby give domination and dominion over the vanquiſhed, and all that is theirs in a juſt and lawful war. *Lex velut pactum commune eſt, quod bello capta capientium fiunt: quæ ex hoſtibus capiuntur jure gentium ſtatim capientium fiunt:* So that unto whom dominion is in this ſort derived, the ſame do they enjoy by the law of Nations, as rightly as they, who acquire their dominion by the free grant of the People. *

Ariſtot. Xenophon. Clem. Alexand. l. 5. F. de acquir. rer. dom.

* The Conqueror had by the law of Nations, and by the Roman law dominion over the conquered, and might bring them under ſervitude, yet amongſt Chriſtians the practiſe and cuſtome is otherwiſe; for a citie taken by conqueſt, ſaith *Bartol. & Bald. non efficitur ſerva, ſed ſubdita reſpectu juriſdictionis, unde cives retinent bona ſua, & habent Teſtamenti factionem*: But when a City is conquered or rather reſcued and redeemed out of the hands of Tyrants, *talem urbem recipi, non capi, & receptam, legibus antiquis & libertate ſtabiliri. Livius lib. 26.*

CHAP. XV.

Of Preſcription as well upon Land as Sea; And the Right and Juriſdiction that the King hath in the Sea, and over the Sea.

MOreover a People, as well as a Prince, may loſe and be barred of many of their rights, although not of their juſt liberty, by cuſtome and preſcription, which is at this day in many things the moſt uſual law between the Prince and the People, as it is alſo an ancient and common title between Princes and nations: *Qui non utendo rem amittit, vel rem patitur uſu capi alienari videtur: Per non uſum & deſuetudinem leges abrogari tacito conſenſu omnium; & nil intereſt ſuffragio Populus voluntatem ſuam declaret, an rebus ipſis & factis. Sed aliud eſt non uſus, aliud uſus contrarius, qui majorem vim habet, quam ſimplex deſuetudo, ſeu non uſus.* Preſcription doth, as the ſea, take from one ſhoar and give to the other, ſtraighten the ancient bounds on the one ſide, and inlarge the bounds of the other: It hath, as we find by experience, a ſtrong operation upon land and ſea:

L. 28. F. de verb. ſignif. L. 32. F. de legibus.

*

Rex

Rex habet de jure gentium privilegia propria, quæ de jure gentium debent esse communia; as in having a right in the sea and over the sea, in respect of his jurisdiction and protection, by an ancient and continued usage; *Vetustatem vim legis tenere; longi temporis consuetudinem vicem servitutis obtinere*; as to lay taxes and impositions on fishers and on navigators in certain cases. *Reditus seu Gabella piscationis, vel ex his quæ in portum vel ex portu vehuntur, sunt inter Regalia.* And also shipwracks and other escheats and perquisites reputed in this age *inter summa Regalia*; whereby much of the liberty due unto men by the law of nature, and also by the ancient laws of the Romans is much restrained, through the force of custome and prescription, or assumed Regalities and priviledges Regal, wrought and effected by the changes in times, and in the manners of men.* All which peradventure may better still be tolerated, then endeavoured to be infringed or altered, in respect of those inconveniences which are likely to ensue. Unto those we may add the use of granting Letters of Mart, *consuetudo clarigationis, seu jus dandi Represalias*, as they call it, which in it self considered is no better then *legitimum latrocinium*, or as the permission to keep Concubines by the Roman Law, termed *legitima intemperantia*: for it is against natural equity, and the Rules of Law, that one should be punished for another: that the Father or Son should be punished the one for the other, or that a Subject should be delivered a hostage for his Prince against his will: yet all this must be tolerated, as a calamity or punishment, falling on some men *etsi sine culpa, non sine causa*: and although it be against natural equity, yet as the Doctors say, *non omne quod est contra naturalem æquitatem idem & injustum sit: favor publici Status facit æqua non æqua, quia omne utile publico id etiam sit æquum.* They are much deceived who affirm, that these maritime Regalities, jurisdictions, and customes, because

Bracton. Bodin. Capella & alii.

L. 1 F. de aqua l. 1. Cod. de servitutib. L. 56. lib. de Feudis.

* *Antiquitùs non hoc jus in maria & flumina & venationes sibi accipiebant finitimi principes, ut nunc, verum propter impensas & sollicitudines principum crescentes, merito inter Regalia reducuntur, quæ ab initio erant communia: Tholosanus de Repub. lib. 9. c. 1. num. 29. Mare & litora maris sunt ad usum communem, jure naturæ & gentium proprietas maris est nullius, licet protectio, jurisdictio & Imperium sit penes Regem. l. 3. F. ne quid in loco pub. piscationis reditus, Gabella, & vectigalia consueta & moderata, sunt inter Regalia, quasi Corona debita, ut laborum præmia, & Regibus, Regnisque tuendis servientia: ut dicunt Interpretes ad titulum, quæ sunt Regalia: in lib. Feudalium. Imperiorum jura, ut Aristides ait, hujusmodi sunt, ut ea non ex domo privatorum, sed ex publica utilitate, Imperii vi & necessitate metiamur.*

becauſe they find the ancient Roman Law againſt ſome of them, are riſen up of later time, and would have a boundleſs and indefinite liberty in the Sea. We find that whatſoever the ancient Roman law was, yet the Roman practiſe was otherwiſe, as was the practiſe of other nations; for Kings and Common-wealths did in former Ages challenge and exerciſe ſuch maritime Regalities, although not all which are now in uſe: *Non eſt novum ut Populus aliquis claſſe potens, in mare imperium exerceat, ut olim* Rhodii, *teſte Strabone, occupationis temporis immemorialis fulcro, licet non ratione præſcriptionis propriè dicta, ſed jure præoccupationis, ſeu ratione quaſi poſſeſſionis, ac etiam quaſi præſcriptionis, non ut modus acquirendi dominii maris conſiderata, ſed ut exceptio robur addit: & ſic alii dicunt, quòd tempore immemoriali, quod vim tituli & privilegii habet, ac inveterata conſuetudine Veneti jus & dominium in mari Adriatico quæſierunt: Nautica omnia lege* Rhodiâ *deciduntur, non jure* Romano; *ſunt enim legum Nauticarum omnium* Rhodia *vetuſtiſſima.* The *Carthaginians* ſaid unto the *Romans*, *vos terrâ marique videamus regentes Imperia, non maris quicquam noſtri juris eſt: Argivi expoſtularunt cum Athenis quia ſuo mari Spartanos Argivorum hoſtes tranſire ſiviſſent, ut contra fœdus.* The *Romans* gave a large commiſſion unto *Pompey* againſt Pirates, with abſolute authority over all the ſea-coaſts, although there were many potent Princes within that compaſſe, who had juriſdiction or dominion upon their own coaſts by law or ancient cuſtome: *Mare dicitur in termino, diſtricto, & territorio illius loci cui magis appropinquat: & inter dictum competere, ne quid in mari, ſive litore fiat, quo ſtatio, itérve fiat deterius: Maris communem uſum eſſe omnibus, tamen concedendum id non eſſe, à* Populo Romano, *qui imperium habet, quo deterior litoris, mariſve uſus futurus ſit.* The Civil law, as well as the laws and cuſtoms of other nations, do vary and detract from the law of nature, *ſed quod detrahit non mutat; non in totum recedit jus civile à naturali, nec per omnia ei ſervit; nam & in eo in quo recedunt à jure naturali, rationem habent ſæpè cum natura conjunctam, ac plerumque publicæ utilitatis, quam & naturæ jus ſuadet anteponi privatæ.* But now to reduce men to their primitive liberty, and abridge Princes of theſe

Gothof. & alii. ad L. 14. F. *de adquir. ret. dom.*

Rhodericus Suarius *de uſu maris & alii.*

L. 9. & Gothof. *de lege Rhodia.*

Livius lib. 30.

Thucydides lib. 7.

Plutarch in Pomp.

Baldus & Gloſſa.

L. 1. S. 17. F. *de Flumin.*

L. 3. l. 4 F. *ne quid in loco pub.*

L. 6. F. *de Juſt. & ju.*

Cuiac. ad tit. F. *de Juſt. & jure.*

theſe Regalities, howſoever they were at firſt gotten, were, as *Baldus* ſaith, *revangare mundum*, to turn the world topſidown, *& eripere clavem de manu Herculis*, and to raiſe a univerſal combuſtion. *Mores ubique jus gentium ſubegerunt; & leges optimas aliquando in poteſtatem ſuam perducunt: Imo vis & Imperium quod primò erat nunc mores vocarentur. Et jus gentium à naturali jure recedit, quia non naturâ ſed moribus nititur, & pleraque jura gentium naturali juri oppoſita ſunt, cùm ad neceſſitates, & utilitates temporum accommodata ſint.* The manners of men and their cuſtomes are ſubject to change and viciſſitude; they have their *ortum, ſtatum, & occaſum*, but preſcription is permanent. Preſcription and cuſtome, have the force of law, and have wrought more changes amongſt Princes and private men, then poſitive laws could effect. *Tacitum Populi conſenſum pro placito & judicio Populi haberi: Inveterata conſuetudo pro lege haberi.* *Cicero* ſaith, much of the Roman law *more conſtat: Diutini mores conſenſu utentium comprobati legem imitantur.* Much of our common law of *England* is cuſtomary law. *France eſt regie par cuſtumes, non par droit eſcrit, fors en quelques* Provinces *par loix* Romanes *prins pour conſtume; Conſuetudines eſſe jus commune in Gallia, vel maxima ejus pars.* But all cuſtomes are not binding, but ſuch as are *juſtè inductæ & legitimè præſcriptæ: qui habent malam fidem, tempore poſſeſſionis inchoatæ & continuatæ nullo temporis tractu præſcribunt, vel in actionibus perſonalibus, vel realibus, dicunt Canoniſtæ*; but the Civilians hold it ſufficient, if it be begun, *bonâ fide*, although not continued to the tearm required for compleating thereof.* This I paſs over, as alſo what is required for the interruption of the courſe of preſcription and cuſtome. Preſcription and cuſtome can raiſe a good title between Kings and nations, as well as amongſt others, for *ex Regum & Populorum longa patientia, & ſic ex præſumpta derelictione, cum immemoriali temporis poſſeſſione, dominia transferri*, by the laws of nations, as the Doctors affirm, *quia per uſum temporis immemorialis inducitur præſumptio juris & de jure, & habet vim pacti, privilegii & legis.*

Cujacius. Plautus. Plinius. L. 1. F. de juſt. & ju. Cujacius.

L. 32 F. de legibus.

Inſtitut. de jure gent.

Tillet. Duck de uſu juris Civilis, & alii.

* *Bona fides non ſufficit, ſed neceſſario requiritur Titulus etiam, qui poſſeſſori tribuat cauſam præſcribendi, ubi jus commune contrarium ei ſit vel præſumtio probabilis adverſus eum ſit, niſi tanti temporis allegetur præſcriptio cujus contrarii memoria non exiſtit: Decretal. de Præſcrip. cap 1 Habet velut longæ poſſeſſionis prærogativam ex eo quod diu uſus ſit.* L. 3. F. De Itinere.

Although ſome are of opinion, that it was brought in by the Roman laws, but long before thoſe laws it was in uſe; for *Jephthah* did object to the King of the *Ammonites*, the poſſeſſion of three hundred years, and *Sulpitius* the like againſt King *Antiochus*, and ſo others. *Si jure civili excludantur actiones privatæ & civiles ligitima præſcriptione; quid non etiam belli cauſæ & actiones armatæ, cum ſit abſurdum, ut nec poſt ſecula deſit armorum & controverſiarum bellicarum prætextus juſtus?* The Roman Emperours have been juſtly barred in many caſes from their Claime by Preſcription. It is the common opinion that Princes and other States have juſtly preſcribed, and thereby acquired their ſupream Power, againſt the Roman Emperors, in reſpect of the preſumed tacite conſent of the Emperors, never making claim, nor giving them any interruption for a very long time. By the law the longeſt time given to the Church, was but the preſcription of one hundred years, that time being elapſed, the claim and rights of the Church ceaſed, and were reputed obſolete: *Centum annorum curriculo hujuſmodi actionem evaneſcere, Romana Eccleſia gaudente centum annorum ſpacio vel privilegio: Centum annorum lapſu exceptionem Eccleſiis opponi ſancimus. Id vero quod eſt de centum annis, mutatum eſt in quadraginta, pro tollendis Eccleſiaſticis actionibus. Epiſcopi Galliæ ſe ſemper tutati ſint adverſus hujuſmodi conatus Curiæ Papalis, præſcriptione jurium & libertatum Gallicanæ.* The Roman Emperors, as we perceive, have loſt very much of their dominions and Empire through dereliction and negligence, which other Princes, States and Cities have gained or uſurped, and now to ſeek the recovery thereof, would cauſe their endeavours to appear as unreaſonable and fruitleſs, as formerly their diligence or power was defective. *Bono publico uſucapio vel præſcriptio introducta eſt, ut aliquis eſſet finis litium, ne ſemper dominia incerta eſſent:* for it is againſt reaſon, as well as againſt Peace, which the laws do more favour then any mens particular loſs, eſpecially through their own careleſneſs, that no bounds ſhould be ſet to mens ſutes and claimes, but controverſies remain immortal.

Judges 11.

Livius lib. 35.

Gentilis & Gret de jure belli,

L. 23. Cod. de Sac. Eccl. Novel. 9.

Novel. 131. c. 6.

Thuanus lib. 101. Molinaus & alii.

L. 1. F. de uſucap.

CHAP.

Chap. XVI.

Againſt the pretended Power of the People to Elect their Prince, or to depoſe him; Of the Norman conqueſt of England, and of Leagues between Princes, and of Aides given to Subjects in Rebellion againſt their Soveraign.

After our adverſaries have made their allegations with ſome verbal flouriſhes; as that there is a natural right in all Societies to the power of Rule, and from the Societies and Communities of People, it is derived to one or more Perſons: and although Supream and univerſal Power be acknowledged to be in Kings, yet not ſo as to exclude the whole State of thoſe Societies conjoyned, and bar the influence of that power, which they have originally over Kings. Then for the proof of this they do offer one reaſon, which is, that every independent People (if they have or can find any ſuch) being driven from their Countrey by any accidents, and ſcattered upon the face of the earth, being forſaken by thoſe who had the rule and power over them, if they unite again, they have a natural right unto Supream authority, and may conſtitute ſuch form of Government as pleaſeth them. As it was the caſe of the Romans when they came firſt from ruined *Troy*, and planted themſelves in *Italy*. And ſo the *Venetians*, forced to forſake their habitations upon the firm land, and to plant themſelves in thoſe Mariſhes and little Iſlands in the *Adriatick* Sea, where *Venice* now ſtandeth, there built and fortified themſelves againſt thoſe barbarous People, which overran the nobleſt parts of *Europe*, againſt whom they could have no protection from the Roman Emperour, their Soveraign. In theſe reſpects they juſtly challenge that City, and the Sea with the Dominion thereof. And although it be farther granted, that a people in ſuch caſe may chooſe any form of Go-

vernment: And that a people, and commonalty alſo, have right to chooſe a King upon the failing of the Royal line; becauſe Regal Right and Dominion, where there is none left to inherit it, neither head to rule over it, cometh to the body and commonalty for preſervation of human ſociety: yet all this helpeth not our adverſaries. It cometh nothing to the proof, that all Kings hereditary hold their authority as derived from the people, and that it ſtill remaineth habitually in the people, and that although Supream power be acknowledged to be in Kings, yet not ſo as to exclude the whole ſtate of thoſe Societies conjoyned, and bar the influence of that power, which they have originally over Kings. Neither can they draw good arguments, and eſpecially general concluſions from ſingular and extraordinary events and examples, or from actions enforced for the ſafety of the People, which is the ſupream Law. Neceſſity often findeth a juſtifyable ſupply, upon the fayling of Gods own ordinances, expreſly injoyned to be obſerved, if otherwiſe the moſt neceſſary duties would fail to be performed.

Regula Juris Canon. *Sed quæ propter neceſſitatem recepta ſunt, non debent in argumentum trahi: Quòd ob gratiam alicujus conceſſa ſunt, non debent ab aliis in exemplo produci*: They cannot prove that in Elective Kingdomes, the People or Electors after they have once elected, do alwayes retain ſuch influence of their power over their Kings, as that they may depoſe, limit or correct their Kings, unleſs their lawes have ſo provided. The Emperour *Valentinian* being requeſted by the Army to chooſe a Colleague, anſwered, it was in their power to advance him to the Imperial Throne, but now for ye to meddle in matters of State, it is improper: it belongeth to the Prince, as ye have all acknowledged, therefore henceforward do as ye are commanded. Authority rightly ſetled, is not eaſily removed, neither by the intermedling of others to be impeached. Thoſe who have authority of Electing, and transferring power unto others, have, after thoſe acts are conſummated, no power to deal in any thing appertaining to that Power by them transferred: *Non eſt novum ut qui dominium non habeant, aliis jus & dominium præbeant, vel cauſam, facultatem, modum jus vel dominium acquirendi, ut creditor qui pignus habet, pignus vendendo, cauſam dominii præſtat quod ipſe non habuit*: So the

L. 46. F. de adquir. rer. dom.

rules

rules often fail, *Qui constituit est major constituto; & nemo dat quod non habet; quod verum est quum nec potentiâ habeat; sed det transferendo, conferendo; Episcopus sic det Sacerdotia, & Canonici Episcopatum, & Cardinales Papatum, quæ nec proprietate, nec possessione habeant, dicunt Interpretes.* When the Romans gave up their Supream power unto their Emperour, no part of that power was ever held to be remaining in the people: *Constituto Principe datum est ei jus, ut quod ille constituisset, ratum esset: Lege antiqua, quæ Regia nuncupatur, omne jus omnisque potestas Populi Romani in Imperatoriam translata sunt potestatem.* This power thus translated, was not a delegated power, *aliud potestas delegata, aliud transfusa.* This power transferred, remained as immutable, as the lawes of the *Medes* and *Persians*, or the sentence and decree of any Court of Judicature, which being once solemnly and definitively pronounced, that Court cannot reverse, *amplius corrigere sententiam suam non possit.* And so in diverse other cases, *non datur regressus.*

L. 2. F. de. origine Juris & tit. Cod de veteri jure enucleen.

L. 55. F. de re jud.

If we cannot find by any law or reason, that the *Romans*, or any other People, who had in them the supream power, could after they had transferred this power to Kings, and elected them, reassume this power again, and when it doth please them depose their Kings, or limit and restrain their power, by vertue of an habitual power still remaining in the People, as is supposed: then undoubtedly we can find no right in the People, or in any societies or communities of People, to depose, restrain or limit Kings of hereditary succession, especially those who have not their right from the People, but by Conquest, as in *England*. From such Kings of hereditary succession and right all jurisdictions do proceed, and in them reside, and unto them they return, say the Lawyers. *Rex est lex animata*, and his office and function is *Indesinens Consulatus*. All other rights and liberties how ancient soever, have been, as in other Kingdomes, at the will and mercy of the several Conquerors of our Island, the *Romans, Saxons, Danes, Normans*. Our rights and liberties contained in *magna Charta*, granted and confirmed by diverse Kings, after much effusion of blood, we, nor our Ancestors did, nor could ever claim, by vertue of any reservation made by the People or any others, when they were conquered, neither

Novel. 109.

ther by any original right inſeparably inherent, and veſted in the People, and from them derived. If we could hardly draw from our Kings the confirmation of our ancient juſt laws in force before the Norman Conqueſt, and with much difficulty and conteſtation obtain our former liberties often promiſed and granted by our Kings, and as often violated: we could not preſerve any ſuch original and inherent right unto any Supream power over our Kings as is imagined: *Normanni cito & breviter terram ſubdentes ſibi, victis vitam, libertatem, leges antiquas Regni conceſſerunt. Willielmus Normannus dedit multis peregrinis, qui cum eo veniebant in Angliam, multas poſſeſſiones, Anglis in ſervitutem redactis, probroſum fuit vocari Anglicus:* He gave to thoſe who ſerved him, *terras & poſſeſſiones Anglorum, ipſis expulſis, & modicum quod illis remanebat, ſub jugo poſuit ſervitutis.* Although he granted our lawes and liberties in uſe before his time, yet he gave many Mannors and much land to ſtrangers and Soldiers who came with him, and unto the Church, and kept much to himſelf as Domaines of his Crown, by which means many of the antient owners were diſpoſſeſſed. The Conquerour did in his Charter and grant of ſome of the Antient lawes and liberties, lay his claim to the Crown, *ex conceſſione ſancti Edwardi, devicto Heraldo Rege,* but no mention of any conſent or right of the People. He did (as other Conquerors) ſometimes ſeem to wave his title by Conqueſt, leſt touching that ſtring too hard, it would make a jar, and hinder all harmony. But his conceſſions and confirmations of the ancient Lawes and liberties, proved for the moſt part but illuſions. Some of our Hiſtorians affirm, that he changed moſt of the Lawes, and made us accept his own Norman Lawes and cuſtomes, delivered in the Norman language, a mark of ſervitude impoſed by the Romans where they had conquered. He moulded the Engliſh cuſtomes to the manners of his own Countrey, and did forbear to grant the Lawes of holy King *Edward*, ſo often called for: yet at the ſuit of the Barons, the Laws of King *Edward*, *corroborata & confirmata erant, quia venerata erant pra cateris legibus per univerſam Angliam.* And therefore our great Lawyer mentioned in our Law books, did ſpeak without book, in ſaying that the Conquerour came not to out thoſe

Huntingdon.

Hemic. de Kingbton & Joh. de Bramp-ton.

Malmesbury.

Ingulfus. Malmesb.

Polid. Virgil.

Edmerus. Huntingdon. Hoveden.

thoſe who had juſt right and poſſeſſions, but thoſe who held wrongfully to the diſheriſon of the King and his Crown. He had more knowledge in points of Law, then he ſeemed to have of matters of fact, ſo long before his time. As we cannot find any thing, that can manifeſt this inherent and original right of the People, ſo can we not find in any caſe any colour of right in them, to juſtifie their depoſing, limiting and chaſtiſing of their King, as our Adverſaries affirm, ſaving onely ſome matters of fact which they would have paſs for Law, and according to their uſual courſe, draw their arguments *à facto ad jus.*

Edward the ſecond and *Richard* the ſecond were charged in Parliament, for oppreſſing, ſpoiling, deſtroying and the like, and were depoſed; yet thoſe Parliaments did never rely upon, or mention the Peoples inherent and original right to juſtify their proceedings, neither much inſiſted upon the proof of thoſe crimes objected againſt them, as cauſes ſufficient to ground their moſt illegal and violent proceedings: Neither did they hold themſelves ſure, until they had by a conjuncture of fraud and force, drawn thoſe Kings to a ſeeming willing reſignation, acted in a form and ſolemnity abounding both in abſurdity and horror. For if the power and authority of Kings ceaſeth *ipſo facto*, as our new men would have it, for oppreſſing ſpoiling, and deſtroying, ſo that they may be depoſed by their Subjects; why was this power and right of the People, never claimed and declared in any Monarchy, when they had ſharp diſputes with their Kings, as we have had, for oppreſſing, ſpoiling and deſtroying; but alwayes we quieted ourſelves with a preſent reformation of preſſures and abuſes, and with a new confirmation of *magna Charta*, which thoſe Kings had no power and right to confirm and grant, if according to theſe mens doctrine, their power was determined *ipſo facto*, and returned to the People; and they or the Parliament in a condition to reaſſume and exerciſe it? If Subjects have no right, and very rarely or never attempted, to bar the next in ſucceſſion, when the right of the Crown deſcended unto him for any perſonal defect or crime of his, or his Anceſtors, or upon any former judgment or ſentence given in any Court againſt him, before the right of ſucceſſion fell unto him; they have leſs

colour

colour of right to depoſe him after he is in poſſeſſion, for any crime then committed: *Turpius ejicitur quam non admittitur.*

The old Doctors of law, of great credit in their times and ſince, could tell them, that it did belong to the Pope as Chriſts Vicar to compel rebellious Subjects to the obedience of their Soveraign by ſpiritual cenſures and excommunications, and that in the Pope was all the power to depoſe Princes; yet ſo as he ought not to proceed to the depoſing of them, except in caſes of the higheſt contumacy, and for the greateſt cauſes, *quæ Rempub. Chriſtianam læderent*; ſeeing it could not be done, but with a great and general Scandal, and with the perturbation of the publick peace. For by their opinion, the Emperour who is elected, could not, although with his free conſent, reſign unto the Electors, but into the hand of the Pope, in reſpect that a reſignation is properly to be made unto him, who is Superiour, and hath right judicially to hear and determine the cauſe, and compel the parties to the obedience of his decree: *Renunciatio non tenet, niſi facta ſit penes eum qui renunciantem invitum, cauſâ cognitâ, judicialiter deſtituere potuiſſet: neque ſine licentia ſuperioris officia ſeu beneficia accepta dimittere licet. Qui mandatum ſuſcepit, deſerere promiſſum officium non debet, aliàs quanti mandatoris interſit damnabitur: mandatum ſuſcipere voluntatis, ſuſceptum conſummare neceſſitatis ſit.* But there are other later Doctors more bold, who affirm that a King for Tyranny may be removed by the Common-wealth, or compelled by the Popes ſpiritual power, *quando à Divinis legibus rebellavit.* Others ſay that he cannot be deprived of his power by the People, from whom he hath his power, *niſi quando in Tyrannidem declinet, ob quam cauſam poſſit bellum juſtum contra eum geri*: And they repute him to be a Tyrant *qui in Repub. non jure principatur; cùm Princeps tendat ad bonum commune, Tyrannus ad proprium; ergo Tyrannus non eſt Princeps, & ideò perturbatio ejus regiminis non habet rationem ſeditionis, niſi forte quando ſic inordinatè perturbatur Tyranni regimen, ut multitudo Subjecta majus detrimentum patiatur ex perturbatione conſequenti, quam ex Tyranni regimine.* And when they have declared a King to be a tyrant, *poteſt in jus vocari à Republica, (unde habeat Regia poteſtas ortum ſuum)*

Innocent. Baldus. Archidic. ad C. admodum Extravag. de renunciat. Peregrin. de jur. Fiſci lib. 1. tit. 2. & 3. L. 27. §. 2. L. 22. §. ult. Mandati F. Soto de Juſt. & jure, lib. 4. queſt. 4. art. 1. Suarez. de legib. l. 3. c. 4. Gloſſa ad Clement. tit. de Baptiſmo. Aquinas ſecund. ſecund. queſt. 42. artic. 2. Mariana de Regis inſtitut. lib. 1. c. 6 & c. 9.

rebus

rebus exigentibus; & ſi ſanitatem reſpuat Principatu ſpoliari; neque ita in Principem jura Poteſtatis tranſtulit Reſpublica, ut non ſibi majorem reſervaverit poteſtatem.

Here our adverſaries joyn with ſome Doctors of the Romiſh Church, for they find this doctrine as neceſſary for them to juſtify rebellion, and to depreſs the authority of Kings, as thoſe Romiſh Doctors do to uphold the Popes Spiritual power, which is, as they ſay, *ex inſtitutione ſpeciali pendente à divina voluntate Inſtituentis, quæ ab inferioribus mutari non poteſt.* But the Regal power they will not have to be *ex inſtitutione divina, ſed à natura, & ita data à natura & ejus autore, ut poſſit in ea mutatio fieri, pro ut communi bono magis fuerit expediens, quia hæc poteſtas ex vi ſolius juris naturæ eſt in hominum communitate*: and although both powers may be ſaid to be of God, yet the Popes Spiritual power is of God immediatly, but the regal Power *mediante naturæ lege. Aquinas* ſaith, that Infidel and Apoſtate Princes, although they have, yet cannot retain dominion over the faithful; but being excommunicated for Apoſtacy, their Subjects are freed *ipſo facto* from their allegeance: Although he doth acknowledge that Infidelity conſidered in it ſelfe, doth not aboliſh the right of dominion, which Infidel Princes have over the faithful, becauſe it is *ex jure gentium proveniente ex naturali ratione; Jus autem divinum quod eſt ex gratia, non tollit jus humanum quod eſt ex naturali ratione*; and yet notwithſtanding, the Church hath power to deprive them of this right, as cauſe ſhall appear. Thus do they labour to obſcure and ſuppreſs the truth, and perplex themſelves and others with thoſe improbable diſtinctions, and pernicious propoſitions; not regarding how they have been confuted, and that by ſetting forth theſe propoſitions, they raiſe Principles of ſedition and rebellion, and leave Kings in the worſt condition of all men, by ſubjecting them to the amplitude of the power, and to the exorbitancy of the wills of their two Maſters, the Pope and the People, to puniſh Tyranny and Apoſtacy; and to witneſs, accuſe, define and judge thereof.* To ſet a colour upon rebellion, they affirme that the People do but ſo transfer their power, as they ſtill retain

* How can the Subjects have juriſdiction over the Soveraign Prince *qui eſt fons omnis juriſdictionis, à quo juriſdictiones per conceſſiones, commiſſiones & confirmationes fluant, ac per appellationes, querelas, & nullitates ad eum reſluant? Bald. & Bracton noſter.*

Suarez de legib. & alii. ſecund. ſecundæ. quæſt. 10. artic 10. & quæſt. 12. artic. 2.

* *In Rege Ethnico vera poteſtas eſt jure gentium, idque ſine ordine ad poteſtatem Eccleſiaſticam: Dominia ut in fide non fundantur, ſic in fidelitate non evertuntur: Privabit Cenſura Pontificis, ſocietate fidelium, quâ fideles ſunt, bonum illud Spirituale & ab Eccleſia; non privabit obedientia ſubditorum, quâ ſubditi ſunt: bonum hoc civile eſt, nec ab Eccleſia. Torrura Torti: Epiſcop. Ciceſtrienſ.*

tain the habitual power in themſelves: This King *James* in his Declaration to all Chriſtian Monarchs calleth the Principle of ſedition: and unto this may be added another of a more ancient date, but of the ſame mould, That allegeance is due to the Politick capacity of the King, and not to his natural Perſon. Upon this aſſertion was grounded the damnable opinion and practiſes of the *Spencers* in *Edward* the Seconds time: and very probable it is that this opinion made the way more ſmooth and eaſy for depoſing that King, by the infection it infuſed, and the influence it had upon that Parliament. Although not long before, thoſe *Spencers*, were amongſt other treaſons, charged with publiſhing in writing, That homage and allegeance was by reaſon of the Crown, and not of the perſon of the King, which they ſaid did appear, in that no allegeance was belonging to his Perſon before the Crown deſcended, and ſo they would infer, that the People had power to depoſe the King. The many abſurdities in this wild argument, the laying it open doth both diſcover, and carry with it the confutation, if there had not been enough ſaid againſt it before. From theſe falſe Principles may arguments be as well drawn, for violation of mens faith and duties enjoyned by divine and humane laws, and for the weakning of the authority of all Magiſtracy and power, although it be given by themſelves, and intended to be exerciſed for their behoof. The Politick capacity of the King which never dyeth, never ceaſeth, is inſeparably annexed unto his natural perſon untill his death, and both are conjoyned at the very inſtant, that the right of the Crown deſcendeth unto him, which giveth a new qualification to his natural perſon, and life and vertue to his Office and function. His natural perſon *eſt organicum inſtrumentum, perſonæ ejus intellectualis, publicæ ſeu politicæ.* The power, office, dignity conſidered ſimply in it ſelf, *cum excluſione ſubjecti cui naturaliter inhæret, non eſt niſi abſtractum quiddam remoto concreto.* This Politick capacity conſidered in it ſelf, is but as the dead letter of the Law without the conjunction of the natural perſon, which giveth it life and vigor. In reſpect both of his natural perſon and Politick capacity, the King is termed in Law, *Lex loquens, Lex animata*, and his authority and office, *indeſinens Conſulatus.* Allegeance is therefore due unto his natural perſon

Rotula Parliamenti.

Baldus & alii, cum Legiſtis Anglicanis

perſon, to which his politick capacity, is as it were appropriated and incorporated: both of them give and receive vertue to and from each other. His natural Perſon, his Politick capacity, his Crown and dignity, in our law-books and Acts of Parliament are taken for one and the ſame often. *Nihil, ne minimum quidem inter* Regem, Regiamque poteſtatem eſſe: *nec Regiam dignitatem, ſeparatum quiddam extra adminiſtrationem Regni dici aut fingi poſſe*, There is no difference between the King and his Kingly Power and office; by an indiſſoluble bond are conjoyned his natural perſon, and his politick capacity: his perſon and his power, his perſon and Majeſty, his perſon and Crown: Theſe all are naturally conjoyned by Gods ordinance, and by the Inſtitution of Monarchy; and a curſe is laid on them who ſeparate thoſe whom God hath joyned. *Coke caſe Poſtnati.* *Thuanus lib. 105.*

The King our Head, and the life of the Law, by the vertue and influence of his Regal power, he onely giveth and preſerveth the benefit of Lawes at home, and Leagues abroad made by him with Foraign Nations. And yet, we ſee to the admiration of men, that our Rebellion in England, of the largeſt extent that ever was, by an example not the like to be found, hath claimed and obtained the benefit and advantage of all leagues, formerly made by their Soveraign with other Princes and States; who were in no age ſo apt to comply with Rebels, for their profit and advantage, without regard of their honour, neither the incouragement they give to others of rebellious ſpirits, or of the evil example which hath, and may juſtly come home unto themſelves. Foraign Princes as they are not Judges, ſo ought they not to make themſelves parties in thoſe odious quarrels between Princes and their Subjects. They ought to be peace-makers, which is one of the moſt glorious titles that can be given to Princes. Leagues are made for the conſervation of peace, mutual aide, commerce and trade. They have more of reality in them then to be accounted but as meer perſonal obligations, they mutually oblige, as they mutually benefit the Princes, their Succeſſours and ſubjects. And therefore to hold that all Leagues are void by the death of thoſe Princes that made them, is a great and dangerous errour. *Imperator percuſſit fœdus, videtur Populus percuſſiſſe Romanus, & fœdere continetur.* The mutual bene- *Seneca.*

fit of both Prince and People is conjoyned and involved: one neither can nor ought to take benefit by them, with the excluding of the other. When *Henry* the Third of *France* was dead, the League made by him with the *Switzers* did continue in force; and upon this reason, *quia non tam cum Henrico quam cum Corona Franciæ contraxisse, quæ nunquam interiit; & ita Rex dicitur nunquam mori, sed mortuum Regem vivo proximo regnum tradere.* These contracts which are *juris Gentium, & juris publici, quia ex publica causa sunt*, as are leagues, do bind each other and their Successours in many cases, without expres mention, *quia facta sunt non nomine proprio Principis, sed sub nomine dignitatis suæ & Reipublicæ, & sunt de natura & consuetudine officii & dignitatis Regiæ, & in figura magis Principatus quam suæ propriæ personæ. Tenentur successores, aut numquid, nihil est cautio ista toties usurpata in fœderibus. Tenentur successores per has publicas Conventiones quæ non nomine proprio sed Reipub. ineuntur, quæ æquè repræsentatur per successores, ut per eos qui sunt hodiè.* It were most unjust and absurd to deprive Princes who are the League-makers and principally concerned in them, of the benefit of their leagues, by their Subjects rebellion, who to receive any benefit by Leagues or Lawes, is contrary to the intention of all who make them, and destructive to the Majesty and security of all Monarchies and States: *Beneficium quod habeo propter te, non possum uti contra te. Cum Prædonibus & rebellibus non est jus legationis, & fœderum: Delinquendo non acquirenda sunt jura; nam jura violantibus, jus non violari, sed potius reddi, si non præstetur In talium scelerum noxios, nullam vim injustam esse.* The Romans complaining of the injuries they had received from the *Hircani*, who answered the Romans, as did the *Sabines*; That they had made a League with *Tarquine* the Roman King, whom they having deposed and abolished the Regal Government, those Leagues were determined with the People of Rome: Although the league might be in force with, and for the benefit of the King expulsed and his Heirs and Successors; *cum Rege initum fœdus manet, etiamsi Rex aut Successor regno à subditis sit pulsus: Jus enim Regni penes ipsum manet, utcunque possessionem amiserit.* The Emperour *Justinian* answered the *Vandals*, requiring the benefit

Thuan. lib. 97.

Baldus & Peregrin. de Jure Fisci.

Gentil. de Jure bell.

Ayala & Grot. de jure bel.

Gentil de legationibus.

Dionys. Halicar. Livius.

Grot. de Jure belli.

Procopius.

benefit of a League, that he would break no league with them, neither make war againſt them, but againſt the Tyrant and Uſurper, who had diſpoſſeſſed their lawful King, and held him in captivity. The Roman General *Quintus* anſwered the Uſurper of *Sparta*, We have made no league nor friendſhip with thee, but with *Pelops* the lawful King: for the very mention of Peace or amity with a Uſurper our ears cannot endure. And thus when *Spartacus*, ſuch another, had gotten ſtrength, and made wars by the help of a rabble of thieves againſt the Romans, he ſent to *Creſſus* to make a league with him, but he rejected it with much ſcorn, as moſt unworthy the Roman name, *quanquam tunc ingentibus bellis labaſceret Reſpub. non tamen datum erat Spartaco aut pacto in fidem reciperetur; non alia magis ſua & Populi Romani contumelia.* So the Emperour *Tiberius* was exceedingly offended at the preſumption of *Tacfarinas* the great African Robber, for ſending Ambaſſadors unto him: *Indoluit Tiberius quod deſertor & Prædo more hoſtium ageret*; for ſuch are in the rank of thoſe *qui fœdus humani generis ruperunt.* Some are of opinion that in an Ariſtocratical or Democratical Government, if civil war happen, both parties ſeeming to be of equal right and ballance (as in that between *Cæſar* and *Pompey*, the *Guelfs* and *Gibelines*) may ſend and receive Ambaſſadors; for they are not in the condition of Rebels; *etſi per eas diſſentiones Reſpublica laditur, non tamen in exitium Reipublicæ contenditur, & qui in alterutras partes diſcedunt, non ſunt vice hoſtium*, as was ſaid before, when two are in competition for a Crown. Yet are there diverſe examples of Princes and States, that in this caſe would decline all dealing with either party, unleſs for their own intereſt and advantage, and anſwer, as thoſe of *Marcelles* did unto *Cæſar* in his war with *Pompey*, that they being the Allies of the people of Rome, it did not belong unto them to enquire, which had the juſteſt cauſe. If either of them would come as friends to *Marcelles*, they would ſo receive them: but if either of them came in any hoſtile manner, they ſhould find from their State no friendly complyance. They were not obliged to aid either *Cæſar* or *Pompey*, although they were the Allies and confederates of the Romans; neither ought any to have engaged themſelves in that pernicious faction of the *Guelfs*

Livius.

Tacitus.

Tacitus. Florus.

L. 21. F. de Captivis.

and *Gibelines*; unleſs it had been to ſuppreſs them. The caſe was more ambiguous in the war between the Houſes of *York* and *Lancaſter*, yet ſo as we may not take for a rule, that ſhift uſed by *Lewis* the Eleventh, who being required by *Edward* the Fourth to ſend him aid againſt *Henry* the Sixth, according to a former league between them, anſwered, that the League which was made by him was with the King and Kingdome, and he held himſelf obliged to aid him onely unto whom the Kingdome did adhere, and declare for their King; like that ſaying of an Earl taken Priſoner at *Boſworth* field, who being demanded why he took Arms for the Uſurper *Richard* the Third, anſwered, that *if the Parliament had ſet the Crown upon a ſtock, he would have fought for it.* The Parliaments in thoſe times did not take on them to diſpoſe of the Crown; and ſo did the Parliament anſwer *Richard* Duke of York, father of *Edward* the Fourth, when he preſſed them to declare his Title againſt *Henry* the Sixth.

Comines. Bodin.

Camdens Remains.

Thoſe who affirm that the change in the State and Government doth diſſolve former Leagues, ſeem to affirm it upon ſuch change as is fairly effected, with a free and unanimous conſent of all, or by the immediate hand of God, when none are left to continue the Succeſſion, and all former rights are extinct; but not of ſuch change as is inforced by a deteſtable rebellion. *Rex Regno pulſus, vel in carcere poſitus ab altero Rege, perdit poſſeſſionem quo ad alios Principes, ſed non ex rebellione ſubditorum ſuorum; & ſic fuit reſponſum à Galliæ Rege Edwardo Angliæ, eum de Regno expulſum ab Henrico Rege ſibi regem non vidiri. Sane cum Rege initum fœdus manet, etiamſi Rex idem aut ſucceſſor regno à ſubditis ſit pulſus: Jus enim regni penes ipſum manet, utcunque poſſeſſionem amiſerit.* If the State and form of Government be changed, as if an Ariſtocratical Government be changed into a Monarchical, the former Leagues remain in force, as ſome conceive, *quia manet idem corpus, etſi mutato capite:* but yet in all ſtipulations and promiſes this condition is implyed, if it be not expreſſed (notwithſtanding that all ſtipulations are *ſtricti juris*) *tacitè ineſſe videtur, ſi in eadem cauſa, ſi in eodem ſtatu res & perſonæ maneant*, leſt men ſhould remain obliged contrary to their intention when they bound themſelves, and be by alterations hap-

Alb. Gentil. diſput. ad leg. Jul. Majeſtatis & de jure belli lib. 3. cap. 23.

Grot. de Jure belli lib. 2. cap. 16.

Grot. de jur. bel. lib. 2. c. 16.

L. 38. F. de ſolutionibus.

happning, tyed to the obſervation and performance of that which is injuſt, impoſſible, or abſurd. Neither can it be ſaid, ſaith *Ariſtotle*, to be the ſame Common-wealth, if there be not *eadem ratio Reipublicæ, ſed alia forma Reipublicæ. Mutata forma propriè interremptam eſſe rei ſubſtantiam. Res abeſſe videtur cujus forma mutata eſt; idcò ſi corrupta reddita ſit, vel transfigurata, res abeſſe videtur.** The Roman Empire often changed in the form, the Empire remaining, as is affirmed, although it paſſed to Kings, to Conſuls, from the Senate and Conſuls to Emperours, ſometimes choſen by the Senate, ſometimes by the Souldiers, but it cannot be ſaid to remain alwayes *in eadem ſpecie & natura*. The Common ſaying of the Divines, when the Preiſthood was changed, the law was changed, *mutato Sacerdotio, mutatur jus*; and ſo may it be ſaid when the Common-wealth is changed, the rights of the Common-wealth are changed, although not aboliſhed. *An idem corpus ſit, an eadem quantitas, an eadem cauſa petendi, an eadem conditio perſonarum, quæ niſi omnia concurrunt, alia res eſt.* Whatſoever mens opinions are of theſe changes in Common-wealths, and notwithſtanding theſe rules of law before declared, Princes and Common-wealths have, and they ought to have an eye, unto all changes and alterations in States and Common-wealths, eſpecially unto violent changes and uſurpations amongſt their Neighbours; for men may juſtly be reſtrained and oppoſed in changing, or abuſing their own, when the intereſt of another is impeached thereby: *ubi capiat aliena Reſpublica detrimentum, vel ſiquid iniqui in alios caderet*: upon which reaſon Queen *Elizabeth* in her Declaration printed, excuſed her ſending aid to the *Hollanders*, although that war ſeemed to be juſt on both ſides, by that which was delivered in the juſtification of both parties: For by her aiding of them ſhe had their aſſiſtance againſt the King of *Spain* her enemy, and the more hope of obtaining a good peace for her ſelf, and thoſe her neareſt neighbours, and of her religion, and the moſt ancient and continual freinds of the Engliſh: ſo that if their condition were changed by conqueſt,

L. 9. F. ad exhib.

*L. 13. F. de verb. ſignif. *ſi ſit Identitas materiæ; diverſitas formæ; res diverſa eſſe dicitur, ut* L. 18. S. 3. *de Pignorat. act. ſi ſublatum ſit ædificium; & eadem ſpecie & qualitate reponatur alterum, ſi quis ſtrictiùs interpretetur, aliud eſt quod ſequenti loco ponitur.* L. 20. S. 2, F. *de ſervitut. urb.*

L. 11. L. 12. 13. 14. *De exceptione rei Judicatæ mutatis perſonarum aliam atque aliam rem facit.* L. 22. *De excep. rei Judicatæ.*

Gentil. de jure belli. lib. 1. C. 16.

queſt, their ancient trade and commerce with *England*, to the great hurt of *England*, would be cut off and deſtroyed through their diſability by ſervitude impoſed on them. *Pericles* in his Oration to his Countrey-men, ſaid, Let us ſuffer thoſe Cities which are of our aſſociation to remain free, if they continue ſo, as they were at the time when we made confederation with them.* If Princes may have juſt cauſe to help the Subjects of another Prince, yet, as *Movillier* ſaid unto *Francis* the Firſt, the act, whatſoever the intention and reaſons are, is ſubject to much envie and miſinterpretation, as appeareth by divers examples: There may be as juſt cauſe for a Prince to help another Prince, eſpecially being depoſed, exiled, or oppreſſed by his ſubjects, and with much leſs envie, and more honour. King *Tarquin* being expelled Rome, fled unto King *Porſena*, and deſiring his aid, adviſed him, not to let paſs the new taken-up courſe of expelling Kings by their own ſubjects: adding alſo, that unleſs Kings would maintain the right of Kings with as much vigour, as ſubjects ſought to advance their own liberty, there would ſoon enſue an univerſal confuſion, and all rights ſacred and prophane would be turned upſidedown, and nothing would be indured in States and Common-wealths, which was eminent above other; whereby would alſo enſue a total ſubverſion of Kingly government; a thing both with God and man moſt beautiful and excellent. Thus *Darius* vanquiſhed by *Alexander* the great, and afterwards murdered by ſome of his own ſubjects, when he was near his death, he ſent unto *Alexander* to revenge it, inaſmuch as it was againſt his honour to ſuffer ſubjects to give an example ſo pernicious. The Romans were ſo quick when ſedition and civil war brake out amongſt their neighbours of *Ardea* in league with them, that they ſent ſpeedily their Embaſſadours to appeaſe the fury, who took off the heads of the Authors, and confiſcated their eſtates to the Treaſury of *Ardea*: *Proximis à tectis ignis defenditur egrè: Paries cum proximus ardet, tunc tua res agitur*

Thucydides l. 2

* The Romans in their Leagues did uſually inſert this Article, that the confederates ſhould not ſuffer the ſubjects of each other, to bear arms againſt the other, neither receive the Traitors fugidives or rebels of each other: and ſo was it in the league between *Henry* the Eighth and *Francis* the Firſt, but thoſe Kings had in their league this addition, That if Civil war did ariſe in any of their Countreys, none of the Confederates ſhould meddle therein, unleſs the war were maintained by ſome forraign Prince. Hiſt. of *Henry* the Eighth.

Livius lib. 2.

Juſtin.

Livius lib. 4.

Ovidius.

&

& licet ædes demoliri vicini, ne ad nos incendium veniat. The Romans would not ſuffer an increaſe of power by iniquity: *Majeſtatis erat Populi Romani, non pati cujuſquam regnum per ſcelus creſcere.* It was none of the leaſt branches of the Romans glory, who were the mirrour of magnanimity, that their Common-wealth might truely be reputed, *Patrocinium orbis terræ, potiùs quam Imperium; & Regum & Nationum portus & perfugium.* But yet the *Romans* were ſeldome loſers by protecting and ayding others, for by that occaſion they got much of their dominions: *Populum Romanum ſociis defendendis, terrarum omnium potitum fuiſſe*: God gave them, as ſome ſay, univerſal dominion, for their excellent vertues and laws: others ſay it was given them to ſcourge the tyranny and vices which did raign amongſt other nations, and to end the diſcord and contentions amongſt them. From the diſcord of Citizens, Strangers take their opportunity againſt them. The *Carthaginians* firſt paſſed into *Cicily*, to take part with one ſide in a Civil war, but they endeavoured to make a prey of both. For ſometimes neighbour Princes have, as in the fable, plaid the part of the Kite between the Mouſe and the Frog, and ended their ſtrife, by gaining that and more then that for which they did contend: as the *Turk* did in *Hungarie*, when they called for his aſſiſtance. And thus other Princes have dealt with the *Italians*, at war amongſt themſelves, until ſtrangers got all, or ſpoiled all they left behind them. Other Princes when their Neighbours have been in Civil war, have endeavoured to break the courſe thereof, and joyned with one ſide, leſt when both were weakned, the whole ſhould fall into the hand of ſome potent neighbour or enemy of theirs. The Roman General *Quintius* offered his aſſiſtance to the States of Greece, to deſtroy *Nabis* the Uſurper of *Sparta*, leſt the contagion thereof ſhould ſpread farther, and take hold of the other Common-wealths and Cities of *Greece*.

L.49.F.ad leg. Aquil. l.3. F.de Incendio. l.7.F. quod vi aut clam.

Saluſt. Cicero.

Saluſt. Cicero.

Livius.

Livius lib.34.

Chap. XVII.

Of the King, and of his power in Parliament.

THeſe pretended Patrons of Popular liberty, or rather of licentiouſneſs and confuſion, can find no way ſo meet in their conceit, for maintaining their Plots, as parity in Eccleſiaſtical Government, which being once eſtabliſhed in the Church, by the example thereof, the Politick and civil State ſhould be drawn to the like. And therefore they will have an actual power to be joyntly in the People with their Soveraign in making of Lawes, which they call their Legiſlative power in Parliament, ſo as they would leave unto the King little or no power with his negative voice, and would weaken all his rights in Parliament, but eſpecially his right of diſſolving Parliaments. They would make him inferiour to the Roman Tribunes of the people; for any one of them by his negative voice could croſs that which his Colleagues propoſed to the People, and any two of them could ſtop all proceedings, and diſſolve all the ſolemn aſſemblies of the people, called by the authority of the other Tribunes. But ſay what they can, they cannot find his Legiſlative power, to be any other thing then the Regal power, and a principal part and branch thereof, although in many caſes it be very juſtly reſtrained in the uſe and exerciſe thereof to the Kings ſitting in his Parliament, his Supream Court and Councel, with all the eſtates of the Kingdome; but this is not in reſpect of any power or original and habitual right inherent in the people. The Commons are called by their Writ *ad faciendum & conſentiendum his quæ de Communi conſilio Regni noſtri ordinari contigerit*; as were the people by the ancient Canons of the Church called to the election of their Paſtors and Prelates, *non quod debent intereſſe ut eligentes, ſed ut conſentientes: nullus invitis populis & non petentibus ordinetur, ne Epiſcopum non optatum, aut contemnant*

King James book to his Son.

Livius. Plutarch.

Diſtinct. 63. c. 1. & c. 12. & c. 8. & c. 36.

ant odiant; Is eligatur qui à Clericis electus, à Plebe expetitus fuerit, nec aliter ascribitur Matthias Apostolorum Collegio, nec aliter septem Diaconi creantur quàm Populo videnti & approbante: Hac exempla ostendunt sacerdotis ordinationem, non nisi sub Populi assistentis conscientia fieri oportere. And thus by the same reason and equity it is, that Lawes which bind the estates and lives of men, and are for the common good of all and singular Persons, should be made in the great Council and supream Court of the Kingdome, by the advice and assent of all the Estates of the Kingdome. By which course the just rights and liberties of the people are preserved, and taxes and levies of money on the people imposed, onely by Parliamentary authority, as they ought to be. For thus the People are induced and ingaged, to a willing observation of those lawes, and submission unto those impositions, for the making and raising whereof they have given their consent. It was said long since by a wise man, that in ancient time and to the honour of *England*, it was best governed of any Kingdome; the People least oppressed, the Kings living upon their own revenues; subsidies granted but onely for war with *France* or *Scotland*, and the war undertaken by the advice of Parliament: by which means the King was the stronger and better served: and he addeth also that Princes cannot levy on their Subjects without their consent. If we look upon our most ancient Statutes or rather Charters of our Kings, and the form and stile of them, we shall find no Character of any legislative power in any but in the King, neither so much as the Peoples concurrence or consent in any Parliamentary way. It appeareth in our ancient Histories, that during the Raign of diverse Kings after the Norman Conquest, the Kings when they called their great Councel or Parliament, the summons went only to the Prelates, Earls, and Barons; and in some of those Histories there is mention of calling the Commonalty, and diverse sage and wise men. In Kings *Johns* time the first summons upon record appeareth to the Prelates and Peers, and something may be gathered although darkly of the admittance of the Commons. Before that time every man by his tenure held himselfe to his great Lords will, in whose assent his dependent Tenents was included:

Acts 1.15. & 6.2. *Cyprianus.*

Comines.

Mat. Paris, Hoveden & alii.

S. Rob. Cotons collections

These were long after the Conquest taxed and assessed by the consent of their Lords of whom they held, who enjoyed great Regalities in their Signiories, and were to their vassalls *totidem Tyranni*, saith *Mat. Paris.* These great Lords did so curb and restrain a long time the King, that there was great danger they would have raised an Aristocracy, or several petty Principalities, so lofty was their carriage towards their King, which in time would have strangled the Monarchy, and all under the pretence of the publick good; which drew on that long and destructive war called the Barons war, and made it the more plausible and popular. After these combustions ended, and the King, the Lords, and people, were reduced to reason and moderation, which often was wanting on both sides; then the Statutes made in the time of King *Edward* the First and *Edward* the second, had these words, *Statutes made by the King in Parliament, at the request and petition of the Communalty, with the assent of the Prelates and Peers*: And so in the Fifth year of *Edward* the Third, at the instance and special request of the Commons with the assent of the Prelates and Peers, we have ordained and established; and so in the succeeding raign of *Richard* the Second, and in the first of *Henry* the Fourth. Thus did the force and efficacy of our Lawes proceed from the Kings Legislative power, acting by and with the concurrence of the three Estates in Parliament, contributing their assistance, according to their respective duties and the trust reposed on them. This concurrence doth serve excellently for the direction, regulation, and in some respect for the qualification, not for the diminution, but for the support of the Kings power and rights. The absoluteness and generality of this Regal power, being also in many cases often restrained, in the administration of Justice, in the inferiour Courts of Justice by the Common Law of England, and by the Lawes and customes of other Kingdomes: And therefore the assistance and concurrence of all the Estates in Parliament cannot amount unto the raising of any coequality or competition of power: the influence of the Soveraign power is that which giveth life to the making and to the execution of all Lawes: both Houses of Parliament acting according to their duties, and not exceeding their bounds, the rights and pre-

prerogative of the King is neither reſtrained nor obſcured, but guided, ſtrengthned and carried with greater vigour and Majeſty, for his and the Peoples moſt good and ſecurity. If our Kings had any co-partners in the Legiſlative power, or were leſs in Parliament then when they were out, our Judges have been much out, and deceived him and others in affirming oftentimes to the Kings, that in no time they were ſo high in their Royal eſtate, as when they ſate in Parliament. The Canon-Lawyers ſay, the Pope is greater when he ſitteth in a General Council, in reſpect of the amplitude of knowledge, and the ſpirit of diſcerning. After the Romans had transferred all their Supream power to their Emperours, yet did the Senate afterwards make divers Lawes, called *Senatus conſulta*, which were often concomitant, or ſubſequent to the Imperial Edicts, yet this was never held to be a conferring or communicating of any part of the Legiſlative Imperial power: no otherwiſe the Kings of *France* do grant to the Parliament of *Paris*, when their arreſts concurr with the Kings Edicts, which are there uſually ratified: *Optimi Principes non dabant ullam conſtitutionem, ſine authoritate & ſententia Juris-conſultorum, & Edicta Principum Romanorum, & ſic Regum Galliæ plerumque ſubſequebantur Senatus Conſulta. Quod Principi placuit legis habet vigorem: leges condere, ſoli Imperatori conceſſum eſt: & legis interpretatio ſolo digna Imperio eſt: Imperator ſolus conditor, & Interpres Legum eſt: licet Auguſtus Cæſar conſtituit viros prudentes ad jus interpretandum, ut major juris authoritas haberetur.* The Emperours ſince have made their Lawes, *hortatu & conſilio Archiepiſcoporum, Epiſcoporum, Ducum, Marchionum, Comitum, Palatinorum, cæterorumque Nobilium & Judicum.* yet this was never holden to be a communicating of their legiſlative power. Long time in the French Monarchy Lawes and Edicts were made by the King, *& per ſuum magnum Concilium*, as in England, and ſo were cauſes Civil, Criminal, and Fiſcal determined and judged by our Kings, or his Council, or by his delegated power to others, before the Courts were eſtabliſhed at *Weſtminſter*, as appeareth by our Hiſtories and Records.

Cujacius, & Pet. Faber. Semeſt. lib. 2. cap. vult.

Inſtitut. & Jura nat. & gens. & Lub. Cod. de legibus Tit. F. de origine Juris. Lib. Feud. conſtitut. Lotharii. & Fred. Imperator.

The three Eſtates in *France* and *Spain* did never in the former times when they were moſt in uſe and power, challenge

any part of the legiſlative power, neither did their Hiſtorians and Lawyers ever grant it to be in them, for ought appeareth. *Bodin* doth acknowledge that in *England* the excellent inſtitution and uſe of Parliaments hath longeſt continued, and ſaith, that *legum rogatio & probatio non arguit Imperii majeſtatem, licet autoritatis ſpecim: Ordines Angliæ autoritatis quandam habeant, jura Majeſtatis & ſummum Imperium eſt in Principe.* And ſo a learned Hollander, no flatterer of Monarchy, ſaith, they are greatly deceived, *qui exiſtimant, cùm Reges acta quædam ſua nolunt rata eſſe, niſi à Senatu vel alio cætu aliquo probentur, partitionem fieri poteſtatis.* The ſupream Senate is (as the Emperour in the Golden Bull calleth the Princes Electors) *partem corporis ſui, columnas & latera, ſolidaſque Imperii Baſes; jus dandi ſuffragii in Comitiis Imperii Germanici non trahit ſecum majeſtatis communicationem, cum majeſtas indiviſibilis ſit, nec Electoribus, Principibus, aut Statibus Imperii communicari poterit: Tamen nihil majeſtati detrahitur, ſi in partem ſolicitudinis Imperatoris invocentur, exemplo veterum Imperatorum Romanorum, qui etſi habuerint ſummam poteſtatem, ut quodcunque Imperator Edicto ſtatuit legis habebat vigorem, nihil tamen magni ponderis ſine conſilio & conſenſu Senatus expedicbant.** Moreover long before the Empire was eſtabliſhed in *Germanie*, when the Roman Emperours granted unto diverſe Princes and States of the Empire, that without them and that form by him preſcribed, lawes ſhould not be made or held effectual, *niſi ſupradictâ formâ obſervatâ, ita ut univerſorum conſenſus, noſtræ ſerenitatis autoritate firmetur: &c.* It was never holden by the interpreters of the lawes, that the Emperours did or could by his grants paſſe away or communicate any part of their inherent, individual legiſlative power. The ſeveral eſtates conjoyned in Parliament, as the Lawyers ſay, in other caſes do aſſiſt, *non per modum limitationis, ſed per viam miniſterii neceſſarii: quia leges condere eſt maximus meri Imperii gradus, & de reſervatis Principis in ſignum ſupremæ poteſtatis. Iuſta & legitima lex eſt quæ proceſſit ex civium conceſſione & voluntate ſpontanea: Lex eſt communis ſpenſio Reipub. quia in legum obſervationem quilibet Civium ſpondere videtur.* This rule in law ought to have place in all Monarchies, as well as in Common-wealths and free States; it being ſo agree-

Dr. Repub.

Grot de Jure belli lib. 1. C. 3.

L. 8. F. de Conſtitutionib. L 1. Cod. de legib.

** Arumæus ad aur. bul. non obſtat quod dicitur in L. 1. F. de conſtitutionibus. Quod Principi placuit, legis habet vigorem, quia ſequitur in fine legis non quicquid de voluntate Regis temere preſumptum eſt, ſed quid conſilio magiſtratuum ſuorum, Rege autoritatem præſente & habita ſuper hoc deliberatione & tractatu, rolle fuerit definitum.*

Bracton & Fleta.

L. 8. Cod de Legibus.

Bartolus & alii.

L. 1. F. de legibus.

agreable to justice and the preservation of all mens rights. Yet our Statutes made in Parliament are the proper acts of the Kings legislative power, with the necessary assistance of the three Estates, *sed nec communicato, nec diviso Imperio.* To communicate he ought in Counsel, but not communicate his supream rights of Empire: for his Empire is not so much permitted by God to his absolute power, as it is by him committed to his faithful care, for the preservation thereof, and the Peoples welfare, and unto him he must give an account.

Chap. XVIII.

Of the Kings Prerogative.

Our Innovators do not rest at the quarrel against the Kings legislative power, and other his Regal rights; but many of them fly at his whole prerogative: The very name is odious unto them, through ignorance or malice. The prerogative of the King, is supported by the Common law of *England*, and it doth often serve to support the Law, and the rights of all men; both of them do give and receive vertue and strength to and from each other. The Emperours in their Lawes say, *Authoritate juris pendet nostra authoritas.* The Regal prerogative, is called *Lex Coronæ*, and it hath ever been reputed a part of the Common Law of England, and so *lex Ecclesiæ Anglicanæ, & lex terræ*: and this *lex terræ* doth, as formerly our regular Parliaments ever did, fence and inclose the prerogative within its just limits, as well for the safety and preservation thereof, as for the welfare of the people, which being the supream law is the scale and measure of the Kings prerogative. For there is great use of the Kings prerogative, especially when the ordinary course of law cannot afford.

Ld. Chanc. Sir Edward Coke postnati.

afford that help, or at leaſt ſo ſpeedily as is neceſſary, not only to prevent injuſtice and wrong unto private men, but alſo the prejudice or damage of the Common-wealth, peradventure irremedial. Oftentimes, *tarda ſunt legum auxilia.* But as the ſame author ſaith, *non utendum Imperio, ubi legibus agi poteſt*, according to the rule in law, *qui communi auxilio munitus ſit, non debet uti extraordinario remedio.* The prerogative is not to croſs, and ſuppreſs the ordinary courſe of law and Juſtice, if it may be avoided, to the prejudice of the juſt rights and liberties of the people: *the Kings ſtrength loveth judgment*; he doth temper his power with juſtice: when the ordinary courſe of law can be effectual, the ſupream abſolute power ought not to be uſed. There is often uſe of the prerogative, *ex vi juſtitiæ*, for moderating the rigor, and for ſuppreſſing the abuſe of diverſe penal lawes, made for terrour, *ut metus, non pœna ad omnes perveniat*; not to be prepoſterouſly uſed as ſnares to catch men by thoſe Informers who often become the Catterpillars of the Common-wealth, and are more evil then neceſſary, whereas the beſt of them are accounted in the number of neceſſary evils: Inſtruments theſe are made for the draining of mens purſes, not for correction of their evil manners; when the penalties exacted ſeem rather as a price ſet upon offenſes then a due puniſhment of them: *Ubi omnis domus delatorum interpretationibus ſubverteretur, atque antehàc flagitiis, ita tunc legibus laborabatur; & graviora remedia quam delicta erant: omnibus notorium ſit hos nunciatores execrabiles eſſe, qui conſequendi præmii cauſa denunciant; adeò turpe eſt delatoris nomen, ut injuriarum actione tenetur qui hominem delatorem appellat.* Penal lawes thus executed prove oftentimes as pernicious, and raiſe as much hatred againſt the Prince as the overſtraining and abuſe of his prerogative, or the exerciſe of an arbitrary power in government.*

Tacitus.

Pſalm 99.

Tacitus.

L. 4. Cod. de Delatorib.

L. 3. Cod. de Injuriis.

* As was the caſe of Empſon and Dudley exactor Legum often made publici odii piaculares victimæ.

in the time of *Henry* the Seventh. *Coriolanus* was baniſhed *Rome*, *ut nimius exactor* Halicarnaſs. 8. *ſummum jus ſumma crux*: ſuch men for their reward, are

But if a King hath not a ſupream power, his government will be very defective, and he is rather to be eſteemed a titular King, then a King inveſted with Regal Soveraignty: although

though it is neceſſary to have this regal power reſtrained in many caſes by juſt lawes, and by the prudence of Judges in courts of judicature, for the good of both Prince and People: *Ea demùm tuta & diuturna eſt potentia, quæ viribus ſuis modum imponit, legitimis vinculis conſtringendo, ut longius à licentia, ita propiùs ad benevolentiam,* as the wiſe *Spartan* King ſaid: And yet they are much deceived, who think Kings can be never too much reſtrained, and eſteem the moſt limited power the beſt and ſafeſt; whereas the beſt limited power, and moſt likely to preſerve peace between the King and his Subjects, is that power which, as much as may be, is regulated by the ſoundeſt, moſt perfect and equal lawes between the Prince and the people. For the ancient wiſe men, Philoſophers and Law-givers, did not approve of thoſe governments as the beſt, where the ſupream power was moſt reſtrained, but where the juſteſt lawes were, and the moſt care for the execution of them: The liberty neceſſary for the Common-wealth, is that liberty which ſerveth as the handmaid of Juſtice, and is to it applyed and appropriated: *Moderata libertas omnibus ſalutifera, immoderata omnibus gravis, & poſſidentibus eam periculoſa.* The *Romans* who were moſt careful in preſerving juſt liberty, and enemies to unlimited power and arbitrary government, were oftentimes conſtrained to conſtitute a Dictator with ſupream authority, exempt from the legal forms and ſtrictneſs of poſitive lawes, who in the time of his Dictatorſhip by the ſame power did all acts as a King, neither could any other make them void, and the reaſon they gave is, *ne capiat Respub. detrimentum*: *Creato Dictatore primùm Romæ, ut intentiores eſſent ad dicto parendum, neque provocatio erat, neque ullum uſquàm, niſi in diligentia parendi auxilium.* And may there not oftentimes be as great cauſe for a King to uſe his extraordinary power without the compaſs of poſitive lawes, as there was for the *Romans* to conſtitute ſuch an extraordinary and ſupream Magiſtrate? For as the prerogative of the King ought to give place to the publick good and ſafety of the people; ſo muſt the rights and liberties of the people, when neceſſity requireth give place to the Kings ſupream authority: *Subditorum jus ſupereminenti Regis dominio ſubeſt, quatenus publica utilitas deſiderat*: *Nam ut æquitas ſimpliciter cedit æqui-*

Valerius Maximus lib. 4. c. 1

Guicciardine

Livius.

Livius Grot. de jure belli.

Livius lib. 2.

Grot. de jure belli lib. 2. C. 14.

æquitati ſumma, ita jus cedit juri ſupremo; maxima æquitas eſt, & lex ſuprema, dicunt Doctores, quæ maxime ad religionem (nam ſumma ratio eſt, ut in lege dicitur, quæ pro Religione facit) ſpectat, & ad publicam utilitatem, & ad hominum ſocietatis vinculum conſervandum. Moreover thoſe who would aboliſh the Kings prerogative would take away with it one moſt proper and neceſſary branch thereof, which is his right of granting priviledges, diſpenſations, qualifications, exemptions from the Rigour of poſitive lawes: ſo as men ſhall expect no farther then the letter of the law granteth, whatſoever their caſe or merits are: whereas there is often as neceſſary uſe, and as great juſtice in priviledges, diſpenſations and exemptions, as there is of and in the Lawes themſelves, and peradventure more. For the moſt perfect poſitive Lawes cannot provide for all accidents. The Roman Prætor had power, as equity required (*æquitas juſtitiæ maximè propria eſt*) *ut juvet jus civile, ut ſuppleat, utque corrigat*, in private mens caſes, and ſo is it in Courts of equity: And ſhall the Prince be reſtrained from the uſe of equity, from helping, ſupplying, or correcting the Law, when the publick good, or the preventing of injury to private men, requireth it, and from diſpenſing with the rigour of penal laws, whoſe right it is *leges condere, & conditas interpretari, duritiamque ipſarum mollire, lenire, temperare? Judices non debent eſſe clementiores legibus: In lege dicitur, quod quidàm perquàm durum eſt, ſed ità lex ſcripta eſt*, and it was not in the power of the Judges to help it, for ſuch a ſtrict and hard Law, onely the Prince could mollifie, when the words of the Law are ſo clear and preciſe, that it cannot receive an interpretation *ex bono & æquo*. it were very abſurd to take away all particular priviledges and exemptions from the general rigour of ſundry Lawes; and it were infinite to ſet down thoſe good Laws founded upon reaſons, drawn from the Law of nature: which nevertheleſs upon due conſideration of circumſtances, are juſtly reſtrained from their general force, without any violation to the reaſon, the life and the ſoul of thoſe Lawes, as the Doctors ſay of the Civil and Canon Lawes. So as there is a diſpenſation of Juſtice, requiſite in point of Juſtice, as well as there

Cicero. L. 1. F. de Juſt & jure.

L. 1. l. 9 l. penul. Cod. de legibus Novel. 82. cap. 10.

L. 12. F. qui et à quibus. Cuiac. & alii ad dic. l. 12. Faber ad regul. Juris.

there is a diſpenſation of Grace, whereby the bond of the Law is not releaſed, the force and obligation of the Law ſtill remaining; onely the reaſon of the Law, which is the ſoul of the Law, in ſome particular caſe ceaſing, the Law is juſtly interpreted in ſuch caſe not to have place, but to have the influence and vertue thereof limited or ſuſpended according to the true meaning of it, and the intention of the Law-maker, leſt injuſtice or abſurdity follow. I grant, that there is often an abuſe of the Law, and of the equity and power given for interpretation, mitigation and diſpenſing with Lawes under the countenance and colour of equity and juſtice; *plerumque ſub authoritate juris perniciosè erratur, ubi quæſtio ſit de bono & æquo.* And there is an abuſe of the Regal power and prerogative; *quid non dominantium cogitavit cupiditas? ubi malè agitur neceſſitatis obtentu, & licita ex neceſſitate in argumenta trahuntur*, as ſaith the Law. And all this is acted under the colour and pretence of reaſon of State, which according to the Italian ſaying, *Ragion di Stato, guaſta tutto il Mondo*, Reaſon of State deſtroyeth the whole world: Theſe are commonly called *Machiavillian* counſels, State-impoſtures, *flagitia dominationis*; as were thoſe which *Proculus*, *Titianus* and *Nero* uſed, when they could find neither Law nor reaſon to juſtifie their will, *ad jus imperii, & ad vim dominationis tranſibant.* And in later ages the exorbitant actions of Princes are juſtified by Sycophants, by reaſon of State, and by the virtue of their abſolute power different from their legal and ordinary power. *Plenitudine poteſtatis Princeps ad malum utendo, dicitur plenitudo tempeſtatis non poteſtatis; nam clauſula de Plenitudine poteſtatis inſerta, intelligitur de poteſtate juſta, non Tyrannica: Ineſt enim plenitudo poteſtatis in diſpoſitione bonitatis, non pravitatis: poſſe injuſtum facere poteſtas non dicitur, ſed infirmitas & deficientia boni. Plenitudo poteſtatis non extenditur ad iniquum, neque exercenda eſt, niſi præmiſſa clave diſcretionis, quæ regulanda eſt per jura & ex bono & æquo. Sed in Jure noſtro nulla eſt mentio plenitudinis poteſtatis. Ut ſæliciatis eſt quantum velis, poſſe; ſic magnitudinis velle quantum poſſis.* But theſe corruptions and abuſes, are not ſufficient cauſes, for the aboliſhing the good and ancient inſtitutions in Common-wealths, or the proper and neceſſary rights

L. 91. F. de verb. oblig.

Plinius.

Tacitus.

Baldus. Innocent. Alciat. ad l. 2. Cod. de injus vocando & alii. De plenitudine poteſtatis Pontificis, non oportet ſermonem effundere, quia ſuperfluum eſt ſolem facibus adjuvare. Extravag. Gloſſ. ad tit. 1. Plinius ad Trajan. Imp.

of Monarchy, unleſs we will imitate our late Reformers, who rather have choſen to cut off from the body that which was neceſſary, then endeavoured to cure any defects there: and have deſtroyed the good corn wilfully, when they onely pretended to pull up the weeds. The Balance would be kept even between the Subjects right and the Kings prerogative, if the Rule in the Roman Law were obſerved, *ſalva Majeſtate Imperii, ſalvoque jure & more majorum; quia ut dicunt Juriſtæ; ſicut pendet Juſtitia & ratio Tributi & Vectigalis in recognitionem Supremæ poteſtatis, & ob onera ſuſtinendæ Reipub. & ad præſtandam ſecuritatem mercibus; ita Regalia Regibus competere, ut ſtatum Reipub, defendant, ſive decus & dignitas, ſive ſalus utriuſque ſpectetur.*

L. 11. F. de Juſtitia.

Kings have their proper and peculiar rights aſſigned by God who commanded *Samuel* to ſhew the people the manner of the King that ſhall raign over them, *rationem iſtam Regis qui regnaturus eſt ſuper eos:* 1 *Sam.* 8. *verſ* 9. & 11.: And *Samuel* told the people the manner of the Kingdome, *elocutus eſt Samuel jus Regni.* 1 Sam. c. 10. verſ. 25.

CHAP. XIX.

Of a Civil War, and of the effects thereof.

I ſhall now draw towards a Concluſion, and in my paſſage ſhew the fruits of our adverſaries wit and labour, which have been rebellion, civil war and ſervitude; with ſome examples of their forerunners in other countries, which they have imitated, being they were more apt to imitate and magnify any example of rebellion, then to take warning by their calamities, or to conſider the ruine of their own Countrey, and the great ſcandal they have given unto the Chriſtian name. To begin with that which was neareſt to us, the late memorable example in *France*, where they of the Reformed religion, for their defence, and liberty of conſcience, as they ſet it forth in their Declarations and Proteſtations, made an Aſſociation, and took

up

up arms. And ſoon after thoſe of the Roman religion, made the like Aſſociation, about the year 1576. which they called the holy League. Both theſe produced the moſt dangerous rebellion and civil war in all reſpects, that ever fell upon that Kingdome, or any other Chriſtian Kingdome; for the people generally fell into ſuch a phrenſy, that they deſerted their Allegeance, charity, religion and reaſon. Into theſe Aſſociations many were at the firſt drawn unadviſedly, through diverſe and different perturbations in their minds, deſigns and intereſts: ſome upon falſe apprehenſions and reports of the King and others, cunningly raiſed: Others through diſcontent, want of livelyhood, hope of raiſing their fortune, hatred one of another, or of the preſent government, or of thoſe of the greateſt power therein: and many out of prepoſterous and wild zeal. And when repentance found entrance, they could not find any way out of this Egyptian darkneſs. The Catholick league was carried on with much ſubtilty and power, by the cheif of the faction, men of great power in Court, and with the ſeduced and violent people: Unto this league by ill counſel, the King *Henry* the Third gave connivance; and out of a deſire to ſuppreſs ſome popular fears and jealouſies of him, and to ſhew himſelfe really a devout ſon of the Church, he ſoon declared himſelfe a party. And finding this Catholick league overmaſter him, he fell to no better ſhift, then the confirming and ratifying of it by his authority. But ſoon after that he perceived the deſign of the cheifeſt amongſt them, tended to the weakning and ſubordination of his authority, by many of their actions, and cheifly by their endeavour to get the power of the *Militia* into their own hands, and all under the colour of defending the Catholick religion, and the extirpation of Hereſy. For prevention thereof, and preſervation of himſelf from contempt (into which he did run by joyning himſelfe to the league) he ſought to throw out the devil by *Belzebub*, and all that he could do could not untwiſt thoſe inextricable difficulties, in which it pleaſed God to leave him, although he was a Prince indued with prudence and fortitude, and, as was ſaid of him, he might have proved an excellent King, if he had not fallen into ſuch times But he laboured and ſtrugled under the contempt and hatred of his

Thuanus.

people, either of them being ſufficient to draw deſtruction upon Princes: and the affection of his ſubjects was faſtned upon the Duke of *Guiſe*, a great Lord in reſpect of his alliance and followers, exceeding popular, ambitious, active, and of excellent parts. Under this new league and aſſociation, new officers were choſen, ſoldiers and mony raiſed, and war with the Proteſtants waged. The League was acknowledged to be the head; the King became an acceſſary, and not the principal; A prepoſterous and deformed government erected; into the body a new head ingraffed, and the old laid aſide, not cut off, but made of no vigour, and ſo was a horrid monſter raiſed. Then did it ſoon appear, that thoſe armes taken up for religion, by the actions and the accidents enſuing, were turned againſt the King, who too late cauſed the Duke of *Guiſe*, and the Cardinal his brother to be ſlain, the which act drew on the Tragedy to the height, for the year after he himſelfe was murdered. Peradventure it will not ſeem impertinent, conſidering the likeneſs of our condition now in *England*, to relate the words of our wiſe Author, who ſaith; *Fœderatorum factio primò libellum emiſiſſe conſtat, quo ſumptorum armorum rationem reddebant, ad levandâ ſcilicet Tributis plebem, quò his ineſcamentis faſcinatam ad ſuas partes pertraherent; & novarum rerum cupidos boni publici prætextu ad rebellionem impelleret: Cum hac non ſucceſſiſſet alia via Plebem aggreſſos, & religionis cauſam in horum animis prævalidam affinxiſſe: & quamvis nemo religionis obſervantior fuit, quam Rex Henricus Tertius, calumnioſè multa in illum commentata erant, quaſi, communicatis cum ſectaria peſte conſiliis, evertenda religioni incumberet.* His ſucceſſor *Henry* the Fourth, a prudent magnanimous and victorious Prince paſſed through a multitude of difficulties, and obtained many victories, before he could get the quiet poſſeſſion of his Crown, occaſioned by the errours and diſſentions amongſt thoſe of his own party, as much as by the power and practiſes of his adverſaries the leaguers and their adherents. And although he did ſee the death and deſtruction of many of them, yet was he driven to agree upon hard conditions, and to grant a pardon to them, to the great diſcontent of many, who had ſerved with much courage and fidelity, for his friends did ſee many malitious rebels in as good or better condition then themſelves. The Kings excuſe was, that he could not help

Thuan. l. 100.

it, for he was inforced to expel one plague by another. And as it is related in the Hiſtory, when the King had effected peace, then did appear the incomprehenſible effects of a Civil war, driven to the height; Religion pretended on all ſides at firſt, caſt out at laſt, or uſed but as a ſtalking-horſe: the honeſt Families, the Cities and the people generally corrupted in manners, and brought to poverty: the Nobility moſt of them accuſtomed to rapine and licentiouſneſs, apt ſtill to retain that courſe of life: Unto thoſe who were oppreſſed with debts, or guilty of great crimes, peace the ineſtimable bleſſing of God, was a torment. Others were ready upon all opportunities, to take arms again, to maintain their prodigality, and wholly indiſpoſed to uſe any honeſt trade or civil courſe of life: and ſome to be revenged of their enemies, or to repair the loſſes they received in the former Civil wars. And as by the occaſion of the Roman civil war impoſitions and taxes intolerable were laid, although then excuſable, yet many of them afterwards remained in time of peace; and ſo it hapned in *France*, after their war ended with the *Engliſh*, and their Civil war, which then followed, or rather came together. *Comines.* But the Kings of *France* had this advantage by their wars, eſpecially by the Civil wars, that they got better knowledge of the wealth and ability of their ſubjects, and what burthens they could bear, as well in times of peace as war, of which before they were ignorant. This evil bargain the people have gotten by the Ringleaders of their Rebellion. And as by the long Carthaginian war the *Romans* changed much their Religion, and loſt their ancient diſcipline, and laudible cuſtomes; ſo did the *French*, who by the means of their Civil wars have had the ſeeds of faction and ſedition ſo ſcattered throughout the Kingdome, that they are alwayes apt to ſpring up, and as mens bodies which by long and lingring ſickneſs, being grown weake and feeble, ever breed new diſeaſes, ſo do vices increaſe in a Kingdome waſted by war of long continuance, which the Roman Cenſors finding *ad mores hominum adverterunt, caſtigandaque vitia, quæ, velut diutinis morbis ægra corpora ex ſeſe gignunt, nata bello erant.* *Livius lib. 24.* And the *French* Hiſtory ſheweth alſo that generally good diſcipline was not only loſt, but religion alſo, and ſacriledge dayly committed, and the number *Thuanus.*

of *Atheists* and *Libertines* augmented. *Bodin* well declareth the particular calamities which fell on men by this war, and faith, *cum bellorum civilium ſæviſſima tempeſtate jactati fuiſſemus, quâ multi naufragium, plures jacturam fecerunt, plerique voraginibus immerſi, nonnulli in littus ejecti, quidam ad ſcopulos; alii aliò abrepti, pauciſſimi incolumes evaſerant.* But the Prophet beſt deſcribeth a Civil war, and the effects thereof, I will ſet *Egyptian* againſt *Egyptian*, every one ſhall fight againſt his brother: the ſpirit of *Egypt* ſhall fail, and I will deſtroy their counſel, and mingle amongſt them the ſpirit of errour: all the commodities of the Countrey ſhall be deſtroyed, and I will deliver the *Egyptians* into the hands of cruel Lords, and mighty Kings ſhall rule over them.*

Epiſt. ad lib. de Repub.

Iſaiah. 19.

*I will fill all the inhabitants of the land with drunkenneſs; I will daſh them one againſt another, even the fathers and the ſons together. I will not have mercy but deſtroy them: Jeremiah, 13. verſe. 13. 14.

Before we have done with Civil war and the effects, I will deliver ſome obſervations of the cauſes, which reach and come home to our caſe. The Roman Civil war, ſaith Saint *Auſtin*, did ſpring up *ex connexione malarum cauſarum*, and ſo did the Civil wars in *France*, and in other Kingdomes. Many of theſe cauſes at the firſt, are more eaſily prevented then foreſeen. The evils which proceed from internal and ſecret cauſes and corruptions, are with moſt difficulty diſcerned, and cured when they appear. The Phyſick applyed either for prevention, or the cure of the malady when it is grown to ſtrength, proveth oftentimes equally dangerous; and therefore an excellent prudence and dexterity is neceſſary in the conduct of affairs of this nature, where there is danger in precipitation, although in uſing the likelieſt means, as well as there is in ſlackneſs and delay. The cauſes alſo of rebellion are often ſecret, ſuddain and different. It is obſerved that ſome men have rebelled againſt their Prince for no cauſe that could be diſcerned; and others who have received extraordinary favours, as well as thoſe who have received apparent injuries: As too much plenty and proſperity doth often make men to themſelves and to their Countrey the greateſt enemies, for ſeditions, ſaith *Plato* do often ariſe through too much plenty, as well as of much want. *Tantæ calamitatis cauſa, eadem quæ omnium, nimia fælicitas, quæ furores civiles peperit: Non miſeriis, ſed licentiæ tantum, concitata turba, otioque laſcivire Plebem. Deleta Carthagine, tanta de rebus proſperis orta mala, (magno ſcilicet terrore Reipublicæ*

Polybius. Machiavil. lib. 3. C. 33. diſcur.

Florus. Livius.

lica Romana, depulso) & dirupta concordia, prius savis cruentisque seditionibus, deinde mox malarum connexione causarum, bellis civilibus, tantæ strages ederentur, tantus sanguis effunderetur. The Prophets do more often record the evils which fell on Gods people, by plenty and prosperity, then by want and adversity: *Plato* being requested, refused to give Lawes to a people swollen up with prosperity and pride. Many men of great spirit, and in great prosperity, carrying their hopes above their merits, have fallen into rebellion, because they had not preferment before others, or did see their enemies made their equals: *Iniquam iracundiam flagitiosa perfidia ulciscí*, and so of *Darius*, *malo publico verecundiam & libidinem suam vindicavit: publicis malis abuti ad occasionem privati odii.* Let such Hot-spurs consider, that fortitude doth as much consist in suffering as in acting; and although they pretend unto much magnanimity, see how short they come (as an ape differeth from a man) of many *Romans*, *Carthaginians*, *Grecians* adorned with true magnanimity, as *Fabius Maximus*, *Scipio*, *Asdrubal*, and of latter time *Gonsalvo* called the great Captain, and others; men as famous for conquering themselves and their inordinate affections, as for subduing their enemies: who received many publick affronts, from their superiors, from their equals, and from their Countrey, and endured the smart of envy and detraction, incident to men of most eminent virtue, without seeking any revenge, whereby the peace of their Countrey might be indangered, although they wanted not power to make themselves as famous rebels as ever were any; but they chose rather a voluntary banishment, or confinement and retreat, untill the predominant malignant humour was spent, and the storm passed over: so as many of them that thus prudently carried themselves, survived their enemies and their malice, and recovered all they had lost, and obtained the highest places of honour and authority both in court and camp. Thus *Camillus licet reus factus invidia obtrectatorum virtutis suæ, tamen ingratam liberavit patriam.* Whereas by the Civil war raised by *Sylla* and *Marius* striving to destroy each other, *non Reipublicæ victoria quærebatur, sed præmium victoriæ res erat publica; utriusque partis defensores, magis agerent amore vincendi quam æquum aut bonum*

Augustin, de Civitate Dei lib. 1 C. 30. lib. 2. C. 18. & lib. 3. C. 21.

It was not poverty and want, but pride, abundance of all things, and too much ease, that caused the sin, and destruction of Sodom. Ezechiel. 16. 49.

Tacitus.

Tacitus.

Livius. Augustinus.

Valerius Maximus. Appian. Augustin. de Civit Dei.

quam cogitarent. And although *Sylla* was reputed Captain of that party which had moſt reaſon and juſtice on their ſide, for ſeeking to remove the corruptions in the Common-wealth, yet was he tearmed *Ingratus Sylla, qui Patriam durioribus remediis quam pericula erant, ſanavit:* and the revenge he took of *Marius* and *Cinna* was with the exceeding deſtructions of the Citizens, and the irrecoverable loſs of the Common-wealth and liberty of the people: In ſo much as *Sylla* was adviſed to reſtrain his hand from ſlaughter, that the Conqueror might have ſome left of the vanquiſhed to live under his Command. Thoſe two, *Sylla* and *Marius*, men of excellent courage and ſkill in war, *decora & ornamenta ſeculi ſui*, falling into contention by ambition and upon punctilio's of honour, began that Civil war which drew on the ruine of their Countrey and themſelves, by the continual factions and ſeditions that followed untill the uſurpation of *Julius Cæſar*. Theſe two had their greedineſs of revenge and of domination and rule requited by a baſe thraldome, which they drew upon themſelves, for they and thoſe that followed them, were inforced to indure all inſolencies of their own licentious ſoldiers, and of others the baſeſt of men, and to purchaſe their good will with donatives and rewards, and to grant unto them the ſpoyl of others who were innocent and neuters, as of thoſe who did oppoſe them. Whereas their Anceſtors, would often proteſt, that they rather would endure to be vanquiſhed by a forraign enemy, then become ſlaves to their own ſouldiers, by the want of power to chaſtiſe them, and means to retain them in their obedience: thinking it more ſhame thus to flatter their ſouldiers, then to fear their enemies.

Seneca.

Auguſt. de Civit Dei lib 3. C. 7. 27. & 28.

Florus.

Plutarch. in Sylla & Marius.

CHAP.

Chap. XX.

No pretences whatsoever can be just ground of a Civil War or Rebellion.

Although the cause of a rebellion proceedeth not from ambition, revenge, or the like, but from actions of good intention, for reformation of the Church or Common-wealth, rebellion and civil war doth follow, yet such men ought to consider, that *Sion is not built with blood*, nor *Jerusalem with iniquity: Wo unto him who buildeth a town with blood, and establisheth a City by iniquity*. He who raiseth a schisme in the Church, or a faction in the Common-wealth, lendeth his hand to the devil against Christ, for the devil entreth at a breach, and then there followeth after a multitude of others of the same crew, although their purposes and designes are different. Those men who have been authors or actors in a Civil war, or a rebellion, can hardly excuse themselves by any pretences whatsoever. There are some crimes, that ignorance cannot serve for a plea: *Lex dat coercionem delictorum quæ sponte, vel ignorantia contrahuntur: vel casu fortuito eveniente, maxime si tam lata culpa fuit, ut dolo sit proxima: tam pessimum factum sit eorum qui terminos finium agrorum diruperunt, abstulerunt, licet per ignorantiam, tamen puniuntur. Coercetur legibus non tantum conscientia, sed ignorantia sæpè, & error & casus. Puniendus erat qui comederit rem sanctam per errorem: filii Aaronis offerentes ignem alienum morte plectuntur, licet facilitate inconsulta, sola mentis inconsideratione peccantes.* That pretence of Religion and Reformation cannot so much avail our adversaries (especially in respect of the evil means used for the carrying on of their design) as it doth give cause of condemning them of peculiar and selfe-ends, hypocrisy and faction, because the workes and manner in acting were equally evil. A timely desisting, a hearty repentance, would have been

Habakkuk.

L. 1. F de legibus. L. 11. F de incendio L. 2. F. de Term. moto. Cujacius. Levit. 22. & Levit. 10. Salvianus

better, then any recrimination, and accuſing of others, to cover their own guilt, or aſſigning falſe or frivolous cauſes and reaſons to deceive the world under the vizard of counterfeit ſanctity. *Medico opus erat, non Patrono. Augmentum reatus eſt, innocentiam jactare poſt culpam: & criminoſior culpa eſt, ubi honeſtior ſtatus eſt; magis damnabilis eſt malitia, quam titulus bonitatis accuſat, & reatus impii eſt, bonum nomen**. He who affordeth his aſſiſtance to an unlawful act, is guilty of all the evil which thereby enſueth, although it proceeded through his inconſideration and want of foreſight, and was without the compaſſe of his thoughts and intention, *præſertim ſi eventus illi neceſſario & per ſe, aut veriſimiliter ſequuntur; quia de culpa quis tenetur, licet culpa ſit non ordinata ad caſum contingentem, ubi operam dat rei illicitæ: ſuperveniens caſus culpam præcedentem non excuſat, maximè ſi id quod agitur tendat & dirigitur ad malum ex ſuapte natura vel intentione operantis.* When any thing happeneth by the occaſion of an unlawful act, although the Actor uſed all the diligence, that he or any other man could, to prevent the evil, yet by the Canon-law he incurreth the penalty of irregularity: *qui cauſam damni dat, damnum dediſſe videtur, maxime ſi dolus malus adfuerit, vel quoties cauſa damni per ſe ad damnum inferendum ſufficit, vel dedit occaſionem proximam; ſi damnum circa rem ſit non extra rem; damnum extrarium non notatur ex eventu:* But he is moſt guilty, *ſi fraus ejus & animus fraudandi eventum habuerit.* Inſomuch as he who taketh in hand any deſign juſt and lawful in itſelfe, and with good intention, if through his raſhneſs and inconſideration, much evil doth follow, his raſhneſs or negligence ſhall be reputed at leaſt an occaſion, and an occaſion in ſome caſes doth paſs for an efficient cauſe, although it be not properly *à cauſa efficiente*, firſt and principally moving; *eſt cauſa impulſiva, & ſi minus principalis, tamen impellit ſeu movet principale agens ad efficiendum: & circumſtat cauſam: eſt acceſſio cauſæ: & ſic ſi per imperitiam & infirmitatem ſuum damnum dederit infirmitas vel imperitia ſua culpæ adnumeratur, cum affectare id quiſque non debeat, in quo vel intelligit, vel intelligere debet, infirmitatem ſuam alii periculoſam futuram eſſe*; eſpecially where the Church or Common-wealth is much concerned, and the peace of either in danger of being violated. For the errours

Salvianus

**Facinus prodigioſum eſt, ubi idipſum in quo Chriſto injuriam faciunt, dicunt ſe ob Chriſti nomen facturos, auctoremque ſui ſceleris quodammodo Deum faciunt. Salvianus.*

Aquinas. Covarruvias. Navarri Manuale.

L. 4. S. 14. F de vi. bon. rapt

Cuiacius. L. 10. F quem fraud. Creditoris.

Cujacius & alii

L. 8. F ad leg. Aquit.

of

of this degree and quality may fitly be compared to an errour committed in war, which according to the common proverb, is committed but once, and that once often ſerveth for all, and deſtroyeth all. This I leave to the conſideration of the members of the late long Parliament, and their adherents, and likewiſe this difficult queſtion, which hath perplexed many honeſt men, although few of this age do ever ſtick at it, Whether by the lawes divine and humane forbidding the reſiſtance of the ſoveraign authority juſtly eſtabliſhed, we are thereby reſtrained from all reſiſtance by armes, in defence of our goods, eſtates, juſt rights and liberties, when the reſiſtance cannot be made without hazard of other mens lives, and of ſedition and civil war. I will not inſiſt upon the deciſion thereof; it is a work of long labour, and not much pertinent. I will add this as a moſt undoubted truth, that a Civil war, or rebellion doth moſt commonly produce more pernicious effects in one year, then either the inſufficiency or Tyranny of a Prince can in an age. It was truly obſerved that the Roman State ſuffered more in thoſe ſeven months of civil war raiſed by *Sylla* and *Marius*, then in the fourteen years of that bloody war which *Annibal* waged in *Italy* at their own doores, although their loſs and damage was ineſtimable. *Brutus* perſwaded a wiſe man his friend to joyn with him in the Conſpiracy againſt *Julius Caſar*; his friend anſwered him, that the government under a Tyrant was not ſo bad as a Civil war. Our fanatick Polititians who teach men rebellion, and to flatter and deceive the People, and to effect their own deſignes, do ſay, that the ſupream power is originally in the People, and habitually inherent in them, and is derived from them, ſo as they may chaſtiſe and change their Kings, and aſſume again their power. They do not conſider how by theſe improbable aſſertions they weaken the bonds of all lawes humane and divine, and cut the ſinewes of all magiſtracy and government: how they do incite the People to rebellion, and preſerve the ſeeds thereof alwayes in their heads and hearts: how they in leaving Kings to ſtand or fall according to the changable humours of their own ſubjects, who againſt common reaſon, they make to be judges, accuſers, witneſſes and parties; they leave Princes in the moſt miſerable condition of all men. And the People alſo,

ever desirous of innovations, and prone to all licentiousness, when the reins are but slackned, they do expose to the fury of their provoked Soveraign by their rebellion, and to the loss of their just rights and liberties, and perhaps to intolerable servitude under the sword of a Conquerour. The Rivers which by some violent accident have broken their bounds, are destructive to themselves, and to all round about them: They run on still and scatter themselves, and never come to good until they return to the right Channel, and are inclosed and fensed again within their proper and just bounds assigned unto them by God and Nature. I could not in this discourse insist upon the framing and deducing of arguments, although they were necessary for confirmation of the truth, and confutation of falshood; neither in drawing my matter into an exact method: my desire was to relate the truth, and to rectify the judgments of the ignorant, for Gods glory, and the good of my Countrey, and to convince those who are perverse, not presuming to teach the wise and learned, unto whose Judgments I do submit.

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